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L A W S

OF THE

Legislature. 1821-31.

S T A T E O F M A I N E ; -

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

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1821.

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RESOLVE

Authorizing the Board of Jurisprudence to superintend the publication of the Laws.

March 8, 1821.

RESOLVED, That the Board of Jurisprudence be, and they are hereby authorized to superintend and direct the printing of the laws revised at the present session of the Legislature, and to prefix thereto the Constitution of the United States, and of this State; classifying and arranging the whole, as to them may appear most convenient; and combining therewith, such of the laws of the last Session, and the present Session, as are of a general nature; the whole to be accompanied with a suitable index; marginal abstracts, references, and table of contents. And the said Board are hereby further empowered and directed to insert in an appendix to the said edition, such parts of the laws by which the several counties in this State have been erected, and their boundaries determined, as to them may appear necessary; and also such other statutes or parts of statutes, revised or not revised, as in their judgment may be useful and expedient.

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CONSTITUTION

OF THE

UNITED STATES.

—:00:—

WE, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America. Preamble.

ARTICLE I.

SECTION I.

1. ALL legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Legislative powers vested in Congress.

SECT. II.

1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the Electors in each State shall have the qualifications requisite for Electors of the most numerous branch of the State Legislature. House of Representatives; its members; by whom chosen; qualifications of Electors.

2. No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen. A Representative to be aged 25 years; 7 Years a citizen of the United States, and an inhabitant of his state, when elected.

3. Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which Representatives and direct taxes to be apportioned according to numbers.

Actual enumeration every ten years.

Limitation of the ratio of Representatives, &c.

First apportionment of Representatives.

Writs of election for filling vacancies.

House of Representatives to choose their Speaker, &c.

shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative; and, until such enumeration shall be made, the State of *New-Hampshire* shall be entitled to choose three; *Massachusetts* eight; *Rhode-Island* and *Providence plantations* one; *Connecticut* five; *New-York* six; *New-Jersey* four; *Pennsylvania* eight; *Delaware* one; *Maryland* six; *Virginia* ten; *North-Carolina* five; *South-Carolina* five; and *Georgia* three.

4. When vacancies happen in the representation from any State, the Executive Authority thereof shall issue writs of election to fill such vacancies.

5. The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

SECT. III.

Two Senators chosen by the Legislature of each State for 6 years; each a vote.
[* See Art. 5, clause 1.]

The Senate divided into three classes.

One third of the Senatorial seats vacated and filled every two years.

Executives of States to fill vacancies in the recess of Legislatures, &c.

1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six years; and each Senator shall have one vote.*

2. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

3. No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

A Senator to be aged 30 years ; nine years a citizen of the United States, and an inhabitant of his State, when chosen.

4. The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

Vice President to be President of the Senate; to vote on an equal division only.

5. The Senate shall choose their other officers, and also a President pro-tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

The Senate to choose their President pro-tempore, &c.

6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.

The sole power to try impeachments in the Senate, &c.

7. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honour, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Extent of judgment in cases of impeachment. Party liable also to judgment, &c. according to law.

SECT. IV.

1. The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may, at any time, by law, make or alter such regulations, except as to the places of choosing Senators.

Times, &c. of holding elections for Senators and Representatives regulated by the States or by Congress.

2. The Congress shall assemble at least once in every year; and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Congress to assemble annually on the first Monday in December, &c.

SECT. V.

1. Each House shall be the judge of the elections, returns, and qualifications of its own members; and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorised to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Each House to judge of the election of its own members. Quorum.

Each House to determine its own rules, &c.

2. Each House may determine the rules of its proceedings; punish its members for disorderly behaviour; and, with the concurrence of two thirds, expel a member.

Journals to be kept by each House and published, &c.

3. Each House shall keep a journal of its proceedings; and, from time to time, publish the same, excepting such parts as may in their judgment, require secrecy: and the yeas and nays of the members of either House, on any question, shall, at the desire of one fifth of those present, be entered on the journal.

Adjournment of both Houses.

4. Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

SECT. VI.

Senators and Representatives to be paid, &c.

1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective Houses, and in going to, or returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

Privileged from arrest, &c.

Concerning the holding of offices by Senators and Representatives.

2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office, under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States, shall be a member of either House, during his continuance in office.

SECT. VII.

Revenue bills to originate in the House of Representatives, &c.

1. All bills, for raising revenue, shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Powers of the President and of Congress in the enacting of laws, and the forms of proceeding on bills in that respect,

2. Every bill, which shall have passed the House of Representatives and the Senate, shall, before it become a law, be presented to the President of the United States. If he approve, he shall sign it: but if not he shall return it, with his objections, to that House in which it shall have originated, who shall enter the objections at large on their journal, and proceed to re-consider it. If, after such re-consideration,

two thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be re-considered ; and if approved by two thirds of that House, it shall become a law. But, in all such cases, the votes of both Houses shall be determined by yeas and nays ; and the names of the persons voting for and against the bill, shall be entered on the journal of each house respectively. If any bill shall not be returned by the President, within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress, by their adjournment, prevent its return ; in which case it shall not be a law.

3. Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States ; and, before the same shall take effect, shall be approved by him ; or being disapproved by him, shall be re-passed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Joint Resolutions, except for adjournment, to receive the same sanction as Bills.

SECT. VIII.

The Congress shall have power—

1. To lay and collect taxes, duties, imposts and excises ; to pay the debts, and provide for the common defence and general welfare of the United States ; but all duties, imposts and excises shall be uniform throughout the United States :

Congress have power to lay taxes, &c.

2. To borrow money on the credit of the United States :

To borrow money.

3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes :

To regulate commerce.

4. To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States :

To establish the rules of naturalization, &c.

5. To coin money ; regulate the value thereof, and of foreign coin ; and fix the standard of weights and measures :

To coin money, &c.

6. To provide for the punishment of counterfeiting the securities and current coin of the United States :

To provide for punishing counterfeiters.

7. To establish post offices and post roads :

To establish postoffices&c.

To promote science, &c.

8. To promote the progress of science and useful arts, by securing, for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries :

To constitute inferior tribunals ; to define and punish piracies, felonies, &c.

9. To constitute tribunals inferior to the supreme court :
To define and punish piracies and felonies committed on the high seas and offences against the law of nations :

To declare war, &c.

10. To declare war ; grant letters of marque and reprisal ; and make rules concerning captures on land and water :

To raise armies, &c.

11. To raise and support armies ; but no appropriation of money to that use shall be for a longer term than two years :

To provide a Navy, &c.

12. To provide and maintain a navy :

To make rules for governing army & navy.
To provide for calling forth the militia.

13. To make rules for the government and regulation of the land and naval forces :

14. To provide for calling forth the militia, to execute the laws of the Union, suppress insurrections, and repel invasions :

To provide for organizing the militia, &c.

15. To provide for organizing, arming and disciplining the militia, and for governing such part of them as may be employed in the service of the United States ; reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress :

To exercise exclusive jurisdiction over a territorial district not exceeding ten miles square.

16. To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States ; and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings : and

To make all laws necessary to the execution of their powers.

17. To make all laws, which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

SECT. IX.

Importation of certain persons not to be

1. The migration or importation of such persons, as any of the States now existing, shall think proper to admit, shall

not be prohibited by the Congress, prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.*

prohibited until after 1808. [* See Art. 8, clause 1.]

2. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it.

Writ of habeas corpus recognized, &c.

3. No bill of attainder, or ex post facto law, shall be passed.

No bills of attainder or ex post facto laws.

4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.

Direct taxes according to census.

5. No tax or duty shall be laid on articles exported from any State. No preference shall be given by any regulation of commerce or revenue, to the ports of one State over those of another: nor shall vessels, bound to or from one State be obliged to enter, clear, or pay duties in another.

No export duty, nor preference of one State to another in commerce.

6. No money shall be drawn from the Treasury, but in consequence of appropriations made by law: and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Money to be expended by legal appropriation only.

7. No title of nobility shall be granted by the United States. And no person, holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince or foreign State.

No titles of nobility can be conferred by the U. States; nor can its officers accept presents, &c.

SECT. X.

1. No State shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder; ex post facto law, or law impairing the obligation of contracts; or grant any title of nobility.

Powers withdrawn from States individually.

2. No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any State on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No State shall,

Powers which the States can exercise only under the sanction of Congress.

without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war, in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II.

SECT. 1.

Executive
power vested
in a President,
&c.

1. The Executive Power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected as follows:

Electors of
President and
Vice Presi-
dent, &c.

2. Each State shall appoint, in such manner as the Legislature thereof may direct, a number of Electors, equal to the whole number of Senators and Representatives, to which the State may be entitled in the Congress; but no Senator, or Representative, or person holding an office of trust or profit under the United States shall be appointed an Elector.

Meeting of the
Electors of
President, &c.

3. *The Electors shall meet in their respective States, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same State with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate, and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of Electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote: a quorum for this purpose shall consist of a member or members from two thirds of the States; and a majority of all the States shall be necessary to a choice. In*

Their pro-
ceedings.

*every case, after the choice of the President, the person having the greatest number of votes of the Electors shall be the Vice-President. But if there shall remain two or more, who have equal votes, the Senate shall choose from them, by ballot, the Vice-President.**

[* Annulled.
See amend-
ments, Art. 12.]

4. The Congress may determine the time of choosing the Electors and the day on which they shall give their votes ; which day shall be the same throughout the United States.

Congress may determine the time of choosing Electors of President, &c.

5. No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President. Neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

The President to be natural born, or a citizen in 1788 ; aged 35 years ; and 14 years a resident of the United States.

6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President ; and the Congress may, by law, provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President ; and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

In case of vacancy in the office of President the Vice President to act, &c.

7. The President shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished, during the period for which he shall have been elected ; and he shall not receive, within that period, any other emolument from the United States, or any of them.

Compensation of the President.

8. Before he enter on the execution of his office, he shall take the following oath or affirmation :

The President to take an oath.

9. " I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States ; and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Form of the oath.

SECT. II.

1. The President shall be commander in chief of the army and navy of the United States, and of the militia of the several States, when called into the actual service of the United

The President is Commander in chief, &c.

He may require written opinions from principal executive officers.

He can reprieve & pardon.

He may, in conjunction with the Senate, make treaties, appoint Ambassadors, &c.

Congress may vest certain appointments in the President alone or otherwise.

The President may fill vacancies during the recess of the Senate.

States. He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons, for offences against the United States, except in cases of impeachment.

2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur: and he shall nominate, and by and with the advice and consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law. But the Congress may, by law, vest the appointment of such inferior officers, as they shall think proper, in the President alone, in the courts of law, or in the heads of departments.

3. The President shall have power to fill up all vacancies that may happen, during the recess of the Senate, by granting commissions, which shall expire at the end of their next session.

SEC. III.

President to inform Congress and recommend measures; may convene and adjourn Congress on certain occasions; receive Ambassadors, &c. shall see the laws executed; and commission all officers of the United States.

1. He shall, from time to time, give to the Congress information of the state of the Union; and recommend to their consideration such measures as he shall judge necessary and expedient.

He may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive Ambassadors and other public ministers. He shall take care that the laws be faithfully executed; and shall commission all the officers of the United States.

SECT. IV.

President, &c. removable on impeachment and conviction.

1. The President, Vice-President and all civil officers of the United States, shall be removed from office, on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

ARTICLE III.

SECT. I.

1. The Judicial power of the United States shall be vested in one Supreme Court, and in such Inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and Inferior Courts, shall hold their offices during good behavior; and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Judicial power vested in a Supreme Court, &c.

Judges to hold their offices during good behavior, &c.

SECT. II.

1. The Judicial Power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting Ambassadors, other public Ministers, and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State, or citizens thereof, and foreign States, citizens or subjects.*

Extent of the Judicial power.

[* See a restriction of this provision. Amendments Article 11.]

2. In all cases, affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.

Original and appellate jurisdiction of the Supreme Court.

3. The trial of all crimes, except in cases of impeachment, shall be by jury: and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places, as the Congress may by law have directed.

Trial of crimes to be by jury, &c.

SECT. III.

1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convict-

Definition of treason.

Two witnesses
necessary to
conviction.

ed of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Congress to
declare the
punishment of
treason.

2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted.

ARTICLE IV.

SECT. I.

Credit to be
given in one
State to the
public acts,
&c. of another.

Full faith and credit shall be given, in each State, to the public acts, records, and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

SECT. II.

Reciprocity of
citizenship
throughout the
States.

1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Criminals flee-
ing from one
State to another,
to be delivered
up on demand.

2. A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the Executive Authority of the State from which he fled, be delivered up, to be removed to the State, having jurisdiction of the crime.

Runaway
slaves, &c. to
be delivered
up.

3. No person, held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due.

SECT. III.

New States
may be admitted
into the
Union, &c.

1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State—nor any State be formed by the junction of two or more States, or parts of States—without the consent of the Legislatures of the States concerned, as well as of the Congress.

Congress to
have power
over territory,
&c.

2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States, and nothing in this Constitution shall be so construed, as to prejudice any claims of the United States, or of any particular States.

Claims of the
States &c. not
to be prejudiced.

SECT. IV.

1. The United States shall guarantee to every State in this Union a republican form of government; and shall protect each of them against invasion, and on application of the Legislature, or of the Executive (when the Legislature cannot be convened,) against domestic violence.

Republican form of government guaranteed to each State, &c.

ARTICLE V.

1. The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress: provided, that no amendment, which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first* and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.†

Mode of amending this Constitution.

[* Concerning the importation of certain persons and direct taxes.]

[† See ante, Art. I. Sec. 3. clause 1.]

ARTICLE VI.

1. All debts contracted, and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States, under this Constitution, as under the confederation.

Assumption of debts incurred under the confederation.

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land: and the Judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

This Constitution, Acts of Congress, and Treaties, the Supreme Law, &c. The State Judges bound thereby.

3. The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all Executive and Judicial officers, both of the United States and of the several States, shall be bound, by oath or affir-

Senators, Representatives, &c. bound by oath or affirmation to sup-

port this Con-
stitution.
No religious
test required.

mation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII.

Ratification of
nine States
sufficient, &c.

The ratification of the Conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.

Done in Convention, by the unanimous consent of the States present, the seventeenth day of September, in the year of our Lord, one thousand seven hundred and eighty seven, and of the Independence of the United States of America, the twelfth. In witness whereof, we have hereunto subscribed our names.

GEORGE WASHINGTON, *President,*
and Deputy from Virginia.

NEW-HAMPSHIRE,	{ JOHN LANGDON, NICHOLAS GILMAN.
MASSACHUSETTS,	{ NATHANIEL GORHAM, RUFUS KING.
CONNECTICUT,	{ WILLIAM SAMUEL JOHNSON, ROGER SHERMAN.
NEW-YORK,	ALEXANDER HAMILTON.
NEW-JERSEY,	{ WILLIAM LIVINGSTON, DAVID BREARLEY, WILLIAM PATTERSON, JONATHAN DAYTON.
PENNSYLVANIA,	{ BENJAMIN FRANKLIN, THOMAS MIFFLIN, ROBERT MORRIS, GEORGE CLYMER, THOMAS FITZSIMONS, JARED INGERSOL, JAMES WILSON, GOUVERNEUR MORRIS.
DELAWARE,	{ GEORGE READ, GUNNING BEDFORD, JUN'R. JOHN DICKINSON, RICHARD BASSET, JACOB BROOM.

MARYLAND,	{ JAMES M'HENRY, DANIEL OF ST. THOMAS JENIFER, DANIEL CARROL.
VIRGINIA,	{ JOHN BLAIR, JAMES MADISON, JUN.
NORTH CAROLINA,	{ WILLIAM BLOUNT, RICHARD DOBBS SPAIGHT, HUGH WILIAMSON.
SOUTH-CAROLINA,	{ JOHN RUTLEDGE, CHARLES COTESWORTH PINCKNEY, CHARLES PINCKNEY, PIERCE BUTLER.
GEORGIA,	{ WILLIAM FEW, ABRAHAM BALDWIN.

Attest,

WILLIAM JACKSON, *Secretary.*

—oo—

IN CONVENTION, *Monday, Sept. 17, 1787.*

PRESENT,

The States of New-Hampshire, Massachusetts, Connecticut, Mr. HAMILTON, from New-York, New-Jersey, Pennsylvania, Delaware, Maryland, Virginia, North-Carolina, South Carolina and Georgia :

1. **RESOLVED**, That the preceding constitution be laid before the United States in Congress assembled, and that it is the opinion of this Convention, that it should afterwards be submitted to a Convention of Delegates, chosen in each State by the people thereof, under the recommendation of its Legislature, for their assent and ratification; and that each convention assenting to and ratifying the same, should give notice thereof to the United States, in Congress assembled.

Constitution to be laid before Congress, &c.

2. **RESOLVED**, That it is the opinion of this Convention, that as soon as the Conventions of nine States shall have ratified this Constitution, the United States in Congress assembled should fix a day on which Electors should be appointed by the States which shall have ratified the same, and a day on which the Electors should assemble to vote for the President, and the time and place for commencing

Congress to fix a day for appointing Electors of President, &c.

Mode recom-
mended for
carrying the
Constitution
into effect.

proceedings under this Constitution: That after such publication, the Electors should be appointed, and the Senators and Representatives elected: That the Electors should meet on the day fixed for the election of the President, and should transmit their votes, certified, signed, sealed and directed as the Constitution requires, to the Secretary of the United States in Congress assembled: That the Senators and Representatives should convene at the time and place assigned: That the Senators should appoint a President of the Senate, for the sole purpose of receiving, opening, and counting the votes for President: and that after he shall be chosen, the Congress, together with the President, should without delay proceed to execute this Constitution.

By the unanimous order of the Convention,

GEORGE WASHINGTON, *President.*

WILLIAM JACKSON, *Secretary.*

—oo—

IN CONVENTION, *Sept. 17, 1787.*

Sir,

Letter from
the Convention
that framed
the Constitu-
tion, to the
President of
Congress.

1. WE have now the honor to submit to the consideration of the United States in Congress assembled, that Constitution which has appeared to us the most advisable.

2. The friends of our country have long seen and desired, that the power of making war, peace and treaties, that of levying money and regulating commerce, and the correspondent Executive and Judicial Authorities, should be fully and effectually vested in the General Government of the Union; but the impropriety of delegating such extensive trusts to one body of men is evident—Hence results the necessity of a different organization.

3. It is obviously impracticable in the federal government of these States, to secure all rights of independent sovereignty to each, and yet provide for the interest and safety of all.—Individuals entering into society, must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the

object to be obtained. It is at all times difficult to draw with precision, the line between those rights which must be surrendered, and those which may be reserved; and on the present occasion, this difficulty was increased by a difference among the several States as to their situation, extent, habits, and particular interests.

4. In all our deliberations on this subject, we kept steadily in our view, that which appears to us the greatest interest of every true American, the consolidation of our Union, in which is involved our prosperity, felicity, safety, perhaps our national existence. This important consideration, seriously and deeply impressed on our minds, led each State in the Convention to be less rigid on points of inferior magnitude than might have been otherwise expected: and thus the Constitution, which we now present, is the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of our political situation rendered indispensable.

5. That it will meet the full and entire approbation of every State, is not perhaps to be expected; but each will doubtless consider, that had her interests been alone consulted, the consequences might have been particularly disagreeable or injurious to others; that it is liable to as few exceptions as could reasonably have been expected, we hope and believe; that it may promote the lasting welfare of that country so dear to us all, and secure her freedom and happiness, is our most ardent wish.

With great respect we have the honor to be, Sir, your Excellency's most obedient, and humble servants.

GEORGE WASHINGTON, *President.*

By the unanimous order of the Convention.

HIS EXCELLENCY THE }
PRESIDENT OF CONGRESS. }

AMENDMENTS TO THE CONSTITUTION.

—:O:—

Amendments
to the Consti-
tution.

[The Conventions of a number of States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added, Congress, at the Session begun and held at the City of New York, on Wednesday, the 4th of March, 1789, proposed to the Legislatures of the several States, twelve amendments, ten of which only were adopted. They are the ten first following.]

ARTICLE I.

Congress pro-
hibited from
interfering
with religion,
with freedom
of speech, of
the press, and
the right of
petition.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE II.

Right of the
people to keep
and bear
arms, &c.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier to
be quartered
in any house,
during peace,
without con-
sent, &c.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

ARTICLE IV.

No search
warrant to is-
sue, except on
probable
cause, oath,
&c.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

ARTICLE V.

No person to
be held to an-
swer for a
crime, unless
on present-
ment, &c. ex-
cept in the
land or naval
forces, nor to
answer for the
same offence
twice, &c.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject, for the same offence, to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case to be a witness against himself, nor to be deprived of life, liberty or prop-

erty, without due process of law ; nor shall private property be taken for public use without just compensation.

ARTICLE VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation ; to be confronted with the witnesses against him ; to have compulsory process for obtaining witnesses in his favour ; and to have the assistance of counsel for his defence.

Assurance of speedy and public trial by jury, &c. in criminal prosecutions.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury, shall be preserved, and no fact tried by a jury, shall be otherwise re-examined, in any Court of the United States, than according to the rules of the common law.

Right of trial by jury in suits at common law, above the value of 20 dollars, &c.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Excessive bail, and unjust and cruel punishments prohibited.

ARTICLE IX.

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Rights enumerated, not to disparage those retained.

ARTICLE X.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Powers not delegated, &c. are reserved to the States or people.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.

Restriction of Judicial powers, [See ante, Art 3. Sec. 2. clause 1.

ARTICLE XII.*

1. The electors shall meet in their respective States, and vote, by ballot, for President and Vice President, one of whom, at least, shall not be an inhabitant of the same State with themselves ; they shall name, in their ballots, the per-

[* See ante, Art. 2. Sec. 1. clause 3.] Actual mode of electing the President and Vice President of the United States.

son voted for as President, and, in distinct ballots, the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and the number of votes for each; which lists they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted: the person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then, from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose, immediately, by ballot, the President. But, in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members, from two thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death, or other constitutional disability of the President.

2. The person having the greatest number of votes as Vice President, shall be the Vice President, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice President: a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

3. But no person constitutionally ineligible to the office of President, shall be eligible to the office of Vice President of the United States.

[NOTE. The eleventh article of the Amendments to the Constitution, was proposed at the second session of the third Congress; and the twelfth article, at the first session of the eighth Congress.]

CONSTITUTION OF MAINE.

—:00:—

WE, the people of Maine, in order to establish justice, ensure tranquillity, provide for our mutual defence, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and, imploring his aid and direction in its accomplishment, do agree to form ourselves into a free and independent State, by the style and title of the State of Maine, and do ordain and establish the following Constitution for the government of the same. Preamble.

ARTICLE I.

DECLARATION OF RIGHTS.

SEC. 1. All men are born equally free and independent, and have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness. Natural rights.

SEC. 2. All power is inherent in the people; all free governments are founded in their authority and instituted for their benefit; they have therefore an unalienable and indefeasible right to institute government, and to alter, reform, or totally change the same, when their safety and happiness require it. All power inherent in the people.

SEC. 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their

Freedom of
worship.

All religious
sects equal.

Religious tests
prohibited.

own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;—and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

Freedom of
speech and
publication.

Truth may be
given in evi-
dence.

SEC. 4. Every citizen may freely speak, write and publish his sentiments on any subject, being responsible for the abuse of this liberty; no laws shall be passed regulating or restraining the freedom of the press; and in prosecutions for any publication respecting the official conduct of men in public capacity, or the qualifications of those who are candidates for the suffrages of the people, or where the matter published is proper for public information, the truth thereof may be given in evidence, and in all indictments for libels the jury, after having received the direction of the court, shall have a right to determine, at their discretion, the law and the fact.

Unreasonable
searches.

SEC. 5. The people shall be secure in their persons, houses, papers and possessions from all unreasonable searches and seizures; and no warrant to search any place, or seize any person or thing, shall issue without a special designation of the place to be searched, and the person or thing to be seized, nor without probable cause—supported by oath or affirmation.

Rights of per-
sons accused.

SEC. 6. In all criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at his election;

To demand the nature and cause of the accusation, and have a copy thereof;

To be confronted by the witnesses against him ;

To have compulsory process for obtaining witnesses in his favor ;

To have a speedy, public and impartial trial, and, except in trials by martial law or impeachment, by a jury of the vicinity. He shall not be compelled to furnish or give evidence against himself, nor be deprived of his life, liberty, property or privileges, but by judgment of his peers or the law of the land.

SEC. 7. No person shall be held to answer for a capital or infamous crime, unless on a presentment or indictment of a grand jury, except in cases of impeachment, or in such cases of offences, as are usually cognizable by a justice of the peace, or in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger. The legislature shall provide by law a suitable and impartial mode of selecting juries, and their usual number and unanimity, in indictments and convictions, shall be held indispensable.

No person to answer to a capital crime, &c. but on indictment.

Exceptions.

Juries.

SEC. 8. No person, for the same offence, shall be twice put in jeopardy of life or limb.

Not to be put in jeopardy twice for one crime.

SEC. 9. Sanguinary laws shall not be passed : all penalties and punishments shall be proportioned to the offence : excessive bail shall not be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.

Sanguinary laws, &c. prohibited.

SEC. 10. All persons, before conviction, shall be bailable, except for capital offences, where the proof is evident or the presumption great. And the privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

All persons allowed bail.

SEC. 11. The legislature shall pass no bill of attainder, *ex post facto* law, nor law impairing the obligation of contracts, and no attainder shall work corruption of blood nor forfeiture of estate.

Bills of attainder &c. prohibited.

SEC. 12. Treason against this State shall consist only in levying war against it, adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or confession in open court.

Treason defined.

Suspension of laws.

SEC. 13. The laws shall not be suspended but by the Legislature or its authority.

Corporal punishment under military law.

SEC. 14. No person shall be subject to corporal punishment under military law, except such as are employed in the army or navy, or in the militia when in actual service in time of war or public danger.

Right to petition.

SEC. 15. The people have a right at all times in an orderly and peaceable manner to assemble to consult upon the common good, to give instructions to their representatives, and to request, of either department of the government by petition or remonstrance, redress of their wrongs and grievances.

To keep and bear arms.

SEC. 16. Every citizen has a right to keep and bear arms for the common defence ; and this right shall never be questioned.

Standing armies not to be kept ;

SEC. 17. No standing army shall be kept up in time of peace without the consent of the Legislature, and the military shall, in all cases, and at all times, be in strict subordination to the civil power.

Nor soldiers to be quartered on citizens, but in time of war.

SEC. 18. No soldier shall, in time of peace be quartered in any house without the consent of the owner or occupant, nor in time of war, but in a manner to be prescribed by law.

Right of redress for injuries.

SEC. 19. Every person, for an injury done him in his person, reputation, property or immunities, shall have remedy by due course of law ; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

Trial by jury.

SEC. 20. In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practised : the party claiming the right may be heard by himself and his council, or either, at his election.

Private property not to be taken without compensation.

SEC. 21. Private property shall not be taken for public uses without just compensation ; nor unless the public exigencies require it.

Taxes.

SEC. 22. No tax or duty shall be imposed without the consent of the people or of their Representatives in the Legislature.

SEC. 23. No title of nobility or hereditary distinction,

privilege, honor or emolument, shall ever be granted or confirmed, nor shall any office be created, the appointment to which shall be for a longer time than during good behavior.

Titles of nobility prohibited.

SEC. 24. The enumeration of certain rights shall not impair nor deny others retained by the people.

Other rights not to be impaired.

ARTICLE II.

ELECTORS.

SEC. 1. Every male citizen of the United States of the age of twenty-one years and upwards, excepting paupers, persons under guardianship, and Indians not taxed, having his residence established in this State for the term of three months next preceding any election; shall be an elector for Governor, Senators and Representatives, in the town or plantation where his residence is so established; and the elections shall be by written ballot. But persons in the military, naval or marine service of the United States, or this State, shall not be considered as having obtained such established residence by being stationed in any garrison, barrack, or military place, in any town or plantation; nor shall the residence of a student at any seminary of learning entitle him to the right of suffrage in the town or plantation where such seminary is established.

Qualification of Electors.

Soldiers and seamen in the United States service.

Students at Colleges or Academies.

SEC. 2. Electors shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest on the days of election, during their attendance at, going to, and returning therefrom.

Electors exempt from arrest on days of election.

SEC. 3. No elector shall be obliged to do duty in the militia on any day of election, except in time of war or public danger.

And from military duty.

SEC. 4. The election of Governor, Senators and Representatives, shall be on the second Monday of September annually forever.

Time of elections.

ARTICLE III.

DISTRIBUTION OF POWERS.

SEC. 1. The powers of this Government shall be divided into three distinct departments, the *Legislative*, *Executive* and *Judicial*.

Powers distributed.

And to be kept
separate.

SEC. 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.

ARTICLE IV.—*Part First.*

LEGISLATIVE POWER—HOUSE OF REPRESENTATIVES.

Legislative
power.

SEC. 1. The Legislative power shall be vested in two distinct branches, a House of Representatives, and a Senate, each to have a negative on the other, and both to be stiled the *Legislature of Maine*, and the style of their Acts and Laws, shall be, "*Be it enacted by the Senate and House of Representatives in Legislature assembled.*"

Style.

House of Rep-
resentatives
elected annu-
ally, to consist
of not less than
100 nor more
than 200.

SEC. 2. The House of Representatives shall consist of not less than one hundred nor more than two hundred members, to be elected by the qualified Electors for one year from the day next preceding the annual meeting of the Legislature.

To be appor-
tioned once in
ten years at
least.

The Legislature which shall first be convened under this Constitution, shall, on or before the fifteenth day of August in the year of our Lord one thousand eight hundred and twenty one, and the Legislature, within every subsequent period of at most ten years and at least five, cause the number of the inhabitants of the State to be ascertained, exclusive of foreigners not naturalized, and Indians not taxed. The number of Representatives shall, at the several periods of making such enumeration, be fixed and apportioned among the several counties, as near as may be, according to the number of inhabitants, having regard to the relative increase of population. The number of Representatives shall, on said first apportionment, be not less than one hundred nor more than one hundred and fifty; and, whenever the number of Representatives shall be two hundred, at the next annual meetings of elections, which shall thereafter be had, and at every subsequent period of ten years, the people shall give in their votes, whether the number of Representatives shall be increased or diminished, and if a majority of votes are in favor thereof, it shall be the duty of the next Legislature thereafter to increase or diminish the number by the rule hereinafter prescribed.

Equally among
the counties.

SEC. 3. Each town having fifteen hundred inhabitants may elect one representative; each town having three thousand and seven hundred and fifty may elect two; each town having six thousand seven hundred and fifty may elect three; each town having ten thousand five hundred may elect four; each town having fifteen thousand may elect five; each town having twenty thousand two hundred and fifty may elect six; each town having twenty six thousand two hundred and fifty inhabitants may elect seven; but no town shall ever be entitled to more than seven representatives: and towns and plantations duly organized, not having fifteen hundred inhabitants, shall be classed, as conveniently as may be, into districts containing that number, and so as not to divide towns; and each such district may elect one representative; and when on this apportionment the number of representatives shall be two hundred, a different apportionment shall take place upon the above principle; and, in case the fifteen hundred shall be too large or too small to apportion all the representatives to any county, it shall be so increased or diminished as to give the number of representatives according to the above rule and proportion; and whenever any town or towns, plantation or plantations not entitled to elect a representative shall determine against a classification with any other town or plantation, the Legislature may, at each apportionment of representatives, on the application of such town or plantation, authorise it to elect a representative for such portion of time and such periods, as shall be equal to its portion of representation: and the right of representation, so established, shall not be altered until the next general apportionment.

Apportionment among towns.

SEC. 4. No person shall be a member of the House of Representatives, unless he shall, at the commencement of the period for which he is elected, have been five years a citizen of the United States, have arrived at the age of twenty one years, have been a resident in this State one year, or from the adoption of this Constitution; and, for the three months next preceding the time of his election shall have been, and, during the period for which he is elected, shall continue to be a resident in the town or district which he represents.

Qualifications of a representative.

Meetings for
choice of Rep-
resentatives
regulated.

Towns class-
ed.

SEC. 5. The meetings for the choice of representatives shall be warned in due course of law by the selectmen of the several towns seven days at least before the election, and the selectmen thereof shall preside impartially at such meetings, receive the votes of all the qualified electors present, sort, count and declare them in open town meeting, and in the presence of the town clerk, who shall form a list of the persons voted for, with the number of votes for each person against his name, shall make a fair record thereof in the presence of the selectmen, and in open town meeting; and a fair copy of this list shall be attested by the selectmen and town clerk, and delivered by said selectmen to each representative within ten days next after such election. And the towns and plantations organized by law, belonging to any class herein provided, shall hold their meetings at the same time in the respective towns and plantations; and the town and plantation meetings in such towns and plantations shall be notified, held and regulated, the votes received, sorted, counted and declared in the same manner. And the assessors and clerks of plantations shall have all the powers, and be subject to all the duties, which selectmen and town clerks have, and are subject to by this Constitution. And the selectmen of such towns, and the assessors of such plantations, so classed, shall, within four days next after such meeting, meet at some place, to be prescribed and notified by the selectmen or assessors of the eldest town, or plantation, in such class, and the copies of said lists shall be then examined and compared; and in case any person shall be elected by a majority of all the votes, the selectmen or assessors shall deliver the certified copies of such lists to the person so elected, within ten days next after such election; and the clerks of towns and plantations respectively shall seal up copies of all such lists and cause them to be delivered into the Secretary's office twenty days at least before the first Wednesday in January annually; but in case no person shall have a majority of votes, the selectmen and assessors shall, as soon as may be, notify another meeting, and the same proceedings shall be had at every future meeting until an election shall have been effected: *Provided, That the*

Legislature may by law prescribe a different mode of returning; examining and ascertaining the election of the representatives in such classes.

SEC. 6. Whenever the seat of a member shall be vacated by death, resignation, or otherwise the vacancy may be filled by a new election. Vacancies to be filled by new elections.

SEC. 7. The House of Representatives shall choose their Speaker, Clerk and other officers. House to choose speaker, &c.

SEC. 8. The House of Representatives shall have the sole power of impeachment. To have the power of impeachment.

ARTICLE IV.—*Part Second.*

SENATE.

SEC. 1. The Senate shall consist of not less than twenty, nor more than thirty one members, elected at the same time, and for the same term, as the representatives, by the qualified electors of the districts, into which the State shall from time to time be divided. Senate to consist of not less than 20 nor more than 31.

SEC. 2. The Legislature, which shall be first convened under this Constitution, shall, on or before the fifteenth day of August, in the year of our Lord one thousand eight hundred and twenty one, and the Legislature at every subsequent period of ten years, cause the State to be divided into districts for the choice of Senators. The districts shall conform, as near as may be, to county lines, and be apportioned according to the number of inhabitants. The number of Senators shall not exceed twenty at the first apportionment, and shall at each apportionment be increased, until they shall amount to thirty one, according to the increase in the House of Representatives. State to be districted once in ten years at least.

SEC. 3. The meetings for the election of Senators shall be notified, held and regulated, and the votes received, sorted, counted, declared and recorded, in the same manner as those for Representatives. And fair copies of the lists of votes shall be attested by the selectmen and town clerks of towns, and the assessors and clerks of plantations, and sealed up in open town and plantation meetings; and the town and plantation clerks respectively shall cause the same to be delivered into the Secretary's office thirty days at least before Meetings for choice of Senators regulated. Electors in unincorporated plantations.

the first Wednesday of January. All other qualified electors living in places unincorporated, who shall be assessed to the support of government by the assessors of an adjacent town, shall have the privilege of voting for Senators, Representatives and Governor in such town; and shall be notified by the selectmen thereof for that purpose accordingly.

Votes to be examined by the Governor and council.

SEC. 4. The Governor and Council shall, as soon as may be, examine the returned copies of such lists, and, twenty days before the said first Wednesday of January, issue a summons to such persons, as shall appear to be elected by a majority of the votes in each district, to attend that day and take their seats.

Senate to determine on elections.

SEC. 5. The Senate shall, on the said first Wednesday of January, annually, determine who are elected by a majority of votes to be Senators in each district; and in case the full number of Senators to be elected from each district shall not have been so elected, the members of the House of Representatives and such Senators, as shall have been elected, shall, from the highest numbers of the persons voted for, on said lists, equal to twice the number of Senators deficient, in every district, if there be so many voted for, elect by joint ballot the number of Senators required; and in this manner all vacancies in the Senate shall be supplied, as soon as may be, after such vacancies happen.

Vacancies how supplied.

Qualification of senators.

SEC. 6. The Senators shall be twenty five years of age at the commencement of the term, for which they are elected, and in all other respects their qualifications shall be the same as those of the Representatives.

Senate to try impeachments.

SEC. 7. The Senate shall have the sole power to try all impeachments, and when sitting for that purpose shall be on oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members present. Their Judgment, however, shall not extend farther than to removal from office, and disqualification to hold or enjoy any office of honor, trust or profit under this State. But the party, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

Party liable to be tried and punished after.

SEC. 8. The Senate shall choose their President, Secretary and other officers. To choose a president, &c.

ARTICLE IV.—*Part Third.*

LEGISLATIVE POWER.

SEC. 1. The Legislature shall convene on the first Wednesday of January annually, and shall have full power to make and establish all reasonable laws and regulations for the defence and benefit of the people of this State, not repugnant to this Constitution, nor to that of the United States. Legislature to meet annually.

SEC. 2. Every bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on a question of adjournment, which shall have passed both Houses, shall be presented to the Governor, and if he approve, he shall sign it; if not, he shall return it with his objections to the House, in which it shall have originated, which shall enter the objections at large on its journals, and proceed to reconsider it. If, after such reconsideration two thirds of that House shall agree to pass it, it shall be sent, together with the objections, to the other House, by which it shall be reconsidered, and, if approved by two thirds of that House, it shall have the same effect, as if it had been signed by the Governor: but in all such cases, the votes of both Houses shall be taken by yeas and nays, and the names of the persons, voting for and against the bill or resolution, shall be entered on the journals of both Houses respectively. If the bill or resolution shall not be returned by the Governor within five days (Sundays excepted) after it shall have been presented to him, it shall have the same force and effect, as if he had signed it, unless the Legislature by their adjournment prevent its return, in which case it shall have such force and effect, unless returned within three days after their next meeting. Governor to sign their acts. If he disapprove—proceedings in such case. To return the bill in five days.

SEC. 3. Each House shall be the judge of the elections and qualifications of its own members, and a majority shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House shall provide. Each house to judge of elections &c.; majority a quorum.

May punish
and expel
members, &c.

SEC. 4. Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member, but not a second time for the same cause.

To keep a
journal.

Yeas & nays.

SEC. 5. Each House shall keep a journal; and from time to time publish its proceedings, except such parts as in their judgment may require secrecy: and the yeas and nays of the members of either House on any question, shall, at the desire of one fifth of those present, be entered on the journals.

May punish
for contempt.

SEC. 6. Each House, during its session, may punish by imprisonment any person, not a member, for disrespectful or disorderly behavior in its presence, for obstructing any of its proceedings, threatening, assaulting or abusing any of its members for any thing said, done, or doing in either House: *Provided*, that no imprisonment shall extend beyond the period of the same session.

Compensa-
tion.

Travelling ex-
penses.

SEC. 7. The Senators and Representatives shall receive such compensation, as shall be established by law; but no law increasing their compensation shall take effect during the existence of the Legislature, which enacted it. The expenses of the members of the House of Representatives in travelling to the Legislature, and returning therefrom, once in each session and no more, shall be paid by the State out of the public Treasury to every member, who shall seasonably attend, in the judgment of the House, and does not depart therefrom without leave.

Members ex-
empted from
arrest.

Freedom of
debate.

SEC. 8. The Senators and Representatives shall, in all cases except treason, felony or breach of the peace, be privileged from arrest during their attendance at, going to, and returning from each session of the Legislature, and no member shall be liable to answer for any thing spoken in debate in either House, in any court or place elsewhere.

Either house
may originate
bills.

Exceptions—
money bills.

SEC. 9. Bills, orders or resolutions, may originate in either House, and may be altered, amended or rejected in the other; but all bills for raising a revenue shall originate in the House of Representatives, but the Senate may propose amendments as in other cases: *Provided*, that they shall not, under color of amendment, introduce any new matter, which does not relate to raising a revenue.

SEC. 10. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this state, which shall have been created, or the emoluments of which increased during such term, except such offices as may be filled by elections by the people: *Provided*, that this prohibition shall not extend to the members of the first Legislature.

Members not to be appointed to certain offices.

Proviso.

SEC. 11. No member of Congress, nor person holding any office under the United States, (post officers excepted) nor office of profit under this State, Justices of the Peace, Notaries Public, Coroners and officers of the militia excepted, shall have a seat in either House during his being such member of Congress, or his continuing in such office.

Persons disqualified to be members.

SEC. 12. Neither House shall during the session, without the consent of the other, adjourn for more than two days, nor to any other place than that in which the Houses shall be sitting.

Adjournments.

ARTICLE V.—Part First.

EXECUTIVE POWER.

SEC. 1. The supreme executive power of this State shall be vested in a Governor.

Governor.

SEC. 2. The Governor shall be elected by the qualified Electors, and shall hold his office one year from the first Wednesday of January in each year.

Elected for one year.

SEC. 3. The meetings for election of Governor shall be notified, held and regulated, and votes shall be received, sorted, counted, declared and recorded, in the same manner as those for Senators and Representatives. They shall be sealed and returned into the Secretary's office in the same manner, and at the same time, as those for Senators. And the Secretary of State for the time being shall, on the first Wednesday of January, then next, lay the lists before the Senate and House of Representatives to be by them examined, and, in case of a choice by a majority of all the votes returned, they shall declare and publish the same. But, if no person shall have a majority of votes, the House of Representatives shall, by ballot, from the persons having the four highest numbers of votes on the lists, if so many there be, elect

Meetings for the choice of Governor regulated.

Votes to be returned to Secretary of State's office.

If there be no choice, provision in such case.

two persons, and make return of their names to the Senate of whom the Senate shall, by ballot, elect one, who shall be declared the Governor.

Qualifications
of Governor.

SEC. 4. The Governor shall, at the commencement of his term, be not less than thirty years of age; a natural born citizen of the United States, have been five years, or from the adoption of this Constitution, a resident of the State; and at the time of his election and during the term for which he is elected, be a resident of said State.

Disqualifica-
tions.

SEC. 5. No person holding any office or place under the United States, this State, or any other power, shall exercise the office of Governor.

Compensa-
tion.

SEC. 6. The Governor shall, at stated times, receive for his services a compensation, which shall not be increased or diminished during his continuance in office.

Commander in
chief of the
Militia.

SEC. 7. He shall be commander in chief of the army and navy of the State, and of the Militia, except when called into the actual service of the United States; but he shall not march nor convey any of the citizens out of the State without their consent, or that of the Legislature, unless it shall become necessary, in order to march or transport them from one part of the State to another for the defence thereof.

Not to march
the Militia out
of the State.

With the ad-
vice of Coun-
cil to appoint
officers.

SEC. 8. He shall nominate, and, with the advice and consent of the Council, appoint all judicial officers, the Attorney General, the Sheriffs, Coroners, Registers of Probate, and Notaries Public; and he shall also nominate, and with the advice and consent of the Council, appoint all other civil and military officers, whose appointment is not by this Constitution, or shall not by law be otherwise provided for; and every such nomination shall be made seven days, at least, prior to such appointment.

To communi-
cate informa-
tion to the Le-
gislation.

SEC. 9. He shall from time to time give the Legislature information of the condition of the State, and recommend to their consideration such measures, as he may judge expedient.

May require
information of
any officer.

SEC. 10. He may require information from any military officer, or any officer in the executive department, upon any subject relating to the duties of their respective offices.

To have the
power of par-
doning.

SEC. 11. He shall have power, with the advice and consent of the Council, to remit, after conviction, all forfeitures

and penalties, and to grant reprieves and pardons, except in cases of impeachment.

SEC. 12. He shall take care that the laws be faithfully executed.

To see that the laws are enacted.

SEC. 13. He may, on extraordinary occasions, convene the Legislature; and in case of disagreement between the two Houses with respect to the time of adjournment, adjourn them to such time, as he shall think proper, not beyond the day of the next annual meeting; and if, since the last adjournment, the place where the Legislature were next to convene shall have become dangerous from an enemy or contagious sickness, may direct the session to be held at some other convenient place within the State.

To convene the Legislature on extraordinary occasions and adjourn them in case of disagreement.

SEC. 14. Whenever the office of Governor shall become vacant by death, resignation, removal from office or otherwise, the President of the Senate shall exercise the office of Governor until another Governor shall be duly qualified; and in case of the death, resignation, removal from office or other disqualification of the President of the Senate, so exercising the office of Governor, the Speaker of the House of Representatives shall exercise the office, until a President of the Senate shall have been chosen; and when the office of Governor, President of the Senate, and Speaker of the House shall become vacant, in the recess of the Senate, the person, acting as Secretary of State for the time being, shall by proclamation convene the Senate, that a President may be chosen to exercise the office of Governor. And whenever either the President of the Senate, or Speaker of the House shall so exercise said office, he shall receive only the compensation of Governor, but his duties as President or Speaker shall be suspended; and the Senate or House, shall fill the vacancy, until his duties as Governor shall cease.

Vacancy how supplied.

ARTICLE V.—Part Second.

COUNCIL.

SEC. 1. There shall be a Council, to consist of seven persons, citizens of the United States, and residents of this State, to advise the Governor in the executive part of government, whom the Governor shall have full power, at his discretion,

Council to consist of seven.

to assemble; and he, with the Counsellors, or a majority of them, may from time to time, hold and keep a Council, for ordering and directing the affairs of State according to law.

Counsellors
how chosen.

SEC. 2. The Counsellors shall be chosen annually, on the first Wednesday of January, by joint ballot of the Senators and Representatives in Convention; and vacancies, which shall afterwards happen, shall be filled in the same manner; but not more than one Counsellor shall be elected from any district, prescribed for the election of Senators; and they shall be privileged from arrest in the same manner, as Senators and Representatives.

Journal to be
kept of their
proceedings.

SEC. 3. The resolutions and advice of Council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either House of the Legislature; and any Counsellor may enter his dissent to the resolution of the majority.

Persons dis-
qualified to be
Counsellors.

SEC. 4. No member of Congress, or of the Legislature of this State, nor any person holding any office under the United States, (post officers excepted) nor any civil officers under this State, (Justices of the Peace and Notaries Public excepted) shall be Counsellors. And no Counsellor shall be appointed to any office during the time, for which he shall have been elected.

Not to be ap-
pointed to any
office.

ARTICLE V.—*Part Third.*

SECRETARY.

Secretary how
chosen.

SEC. 1. The Secretary of State shall be chosen annually, at the first session of the Legislature, by joint ballot of the Senators and Representatives in Convention.

To keep the
records of the
State.

SEC. 2. The records of the State shall be kept in the office of the Secretary, who may appoint his deputies, for whose conduct he shall be accountable.

To attend the
Governor and
Council,

SEC. 3. He shall attend the Governor and Council, Senate and House of Representatives, in person or by his deputies, as they shall respectively require.

And to keep
the records of
the govern-
ment.

SEC. 4. He shall carefully keep and preserve the records of all the official acts and proceedings of the Governor and Council, Senate and House of Representatives, and, when required, lay the same before either branch of the Legisla-

ture, and perform such other duties as are enjoined by this Constitution, or shall be required by law.

ARTICLE V.—Part Fourth.

TREASURER.

SEC. 1. The Treasurer shall be chosen annually, at the first session of the Legislature, by joint ballot of the Senators, and Representatives in Convention, but shall not be eligible more than five years successively.

Treasurer how chosen; ineligible for more than five years in succession.

SEC. 2. The Treasurer shall, before entering on the duties of his office, give bond to the State with sureties, to the satisfaction of the Legislature, for the faithful discharge of his trust.

To give bond.

SEC. 3. The Treasurer shall not, during his continuance in office, engage in any business of trade or commerce, or as a broker, nor as an agent or factor for any merchant or trader.

Not to engage in business of trade, &c.

SEC. 4. No money shall be drawn from the Treasury, but by warrant from the Governor and Council, and in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money, shall be published at the commencement of the annual session of the Legislature.

No money to be drawn but by warrant, &c.

ARTICLE VI.

JUDICIAL POWER.

SEC. 1. The Judicial power of this state shall be vested in a Supreme Judicial Court, and such other courts as the Legislature shall from time to time establish.

Supreme and other Courts.

SEC. 2. The Justices of the Supreme Judicial Court shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office, but they shall receive no other fee or reward.

Compensation.

SEC. 3. They shall be obliged to give their opinion upon important questions of law, and upon solemn occasions, when required by the Governor, Council, Senate or House of Representatives.

To give opinion on questions of law to the Governor, &c.

Tenure of Judicial offices.

SEC. 4. All Judicial officers, except Justices of the Peace, shall hold their offices during good behavior, but not beyond the age of seventy years.

Justices of the Peace and Notaries.

SEC. 5. Justices of the Peace and Notaries Public, shall hold their offices during seven years if they so long behave themselves well, at the expiration of which term, they may be re-appointed or others appointed, as the public interest may require.

Justices of Supreme Judicial Court to hold no other office.

SEC. 6. The Justices of the Supreme Judicial Court shall hold no office under the United States, nor any State, nor any other office under this State, except that of Justice of the Peace.

ARTICLE VII.

MILITARY.

Officers, by whom elected.

SEC. 1. The captains and subalterns of the Militia shall be elected by the written votes of the members of their respective companies. The field officers of regiments by the written votes of the captains and subalterns of their respective regiments. The Brigadier Generals in like manner, by the field officers of their respective brigades.

Notify electors, &c.

SEC. 2. The Legislature shall, by law, direct the manner of notifying the electors, conducting the elections, and making the returns to the Governor of the officers elected; and, if the electors shall neglect or refuse to make such elections, after being duly notified according to law, the Governor shall appoint suitable persons to fill such offices.

Adjutant General, &c. Major Generals, &c.

SEC. 3. The Major Generals shall be elected by the Senate and House of Representatives, each having a negative on the other. The Adjutant General and Quarter-master General shall be appointed by the Governor and Council; but the Adjutant General shall perform the duties of Quarter-master General, until otherwise directed by law. The Major Generals and Brigadier Generals, and the commanding officers of regiments and battalions shall appoint their respective staff officers; and all military officers shall be commissioned by the Governor.

Organization of the Militia.

SEC. 4. The Militia, as divided into divisions, brigades, regiments, battalions and companies pursuant to the laws

now in force, shall remain so organized, until the same shall be altered by the Legislature.

SEC. 5. Persons of the denominations of Quakers and Shakers, Justices of the Supreme Judicial Court and Ministers of the Gospel may be exempted from military duty, but no other person of the age of eighteen and under the age of forty-five years, excepting officers of the Militia, who have been honorably discharged, shall be so exempted, unless he shall pay an equivalent to be fixed by law.

Persons who may be exempted from Military duty.

ARTICLE VIII.

LITERATURE.

A general diffusion of the advantages of education being essential to the preservation of the rights and liberties of the people; to promote this important object, the Legislature are authorized, and it shall be their duty to require, the several towns to make suitable provision, at their own expense, for the support and maintenance of public schools; and it shall further be their duty to encourage and suitably endow, from time to time, as the circumstances of the people may authorize, all academies, colleges and seminaries of learning within the State: *Provided*, That no donation, grant or endowment shall at any time be made by the Legislature, to any Literary Institution now established, or which may hereafter be established, unless, at the time of making such endowment, the Legislature of the State shall have the right to grant any further powers to, alter, limit or restrain any of the powers vested in, any such literary institution, as shall be judged necessary to promote the best interests thereof.

Legislature to require of towns to support public schools.

May endow colleges, &c.

Proviso.

ARTICLE IX.

GENERAL PROVISIONS.

SEC. 1. Every person elected or appointed to either of the places or offices provided in this Constitution, and every person elected, appointed, or commissioned to any Judicial, Executive, Military, or other office under this State, shall, before he enter on the discharge of the duties of his place or office, take and subscribe the following oath or affirmation:

Oaths and subscriptions.

"I do swear, that I will support the Constitution of the United States and of this State, so long as I shall continue a citizen thereof. So help me God."

"I do swear, that I will faithfully discharge, to the best of my abilities, the duties incumbent on me as according to the Constitution and the laws of the State. So help me God:" *Provided*, That an affirmation in the above forms may be substituted, when the person shall be conscientiously scrupulous of taking and subscribing an oath.

Before whom
to be taken.

The oaths or affirmations shall be taken and subscribed by the Governor and Counsellors before the preceding officer of the Senate, in the presence of both Houses of the Legislature, and by the Senators and Representatives before the Governor and Council, and by the residue of said officers before such persons as shall be prescribed by the Legislature; and whenever the Governor or any Counsellor shall not be able to attend during the session of the Legislature to take and subscribe said oaths or affirmations, such oaths or affirmations may be taken and subscribed in the recess of the Legislature before any Justice of the Supreme Judicial Court: *Provided*, that the Senators and Representatives, first elected under this Constitution, shall take and subscribe such oaths or affirmations before the President of the Convention.

Persons disqualified to be
members of the
Legislature.

From holding
more than one
office.

Commissions.

SEC. 2. No person holding the office of Justice of the Supreme Judicial Court, or of any inferior Court, Attorney General, County Attorney, Treasurer of the State, Adjutant General, Judge of Probate, Register of Probate, Register of Deeds, Sheriffs or their deputies, Clerks of the Judicial Courts, shall be a member of the Legislature; and any person holding either of the foregoing offices, elected to, and accepting a seat in the Congress of the United States, shall thereby vacate said office; and no person shall be capable of holding or exercising, at the same time, within this State more than one of the offices before mentioned.

SEC. 3. All Commissions shall be in the name of the State, signed by the Governor, attested by the Secretary or his deputy, and have the seal of the State thereto affixed.

SEC. 4. And in case the elections, required by this Constitution on the first Wednesday of January annually, by the two Houses of the Legislature, shall not be completed on that day, the same may be adjourned from day to day, until completed, in the following order: the vacancies in the Senate shall first be filled; the Governor shall then be elected, if there be no choice by the people; and afterwards the two Houses shall elect the Council.

Elections on the first Wednesday of January may be adjourned from day to day.

SEC. 5. Every person holding any civil office under this State, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the Governor with the advice of the Council, on the address of both branches of the Legislature. But before such address shall pass either House, the causes of removal shall be stated and entered on the journal of the House in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defence.

Every civil officer may be removed by impeachment or address.

SEC. 6. The tenure of all offices, which are not or shall not be otherwise provided for, shall be during the pleasure of the Governor and Council.

Tenure of office.

SEC. 7. While the public expenses shall be assessed on polls and estates, a general valuation shall be taken at least once in ten years.

Valuation.

SEC. 8. All taxes upon real estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof.

Real estate to be taxed according to its value.

ARTICLE X.

SCHEDULE.

SEC. 1. The first Legislature shall meet on the last Wednesday in May next. The elections on the second Monday in September annually shall not commence until the year one thousand eight hundred and twenty one, and in the mean time the election for Governor, Senators and Representatives shall be on the first Monday in April, in the year of our Lord one thousand eight hundred and twenty, and at this election the same proceedings shall be had as are required at the elections, provided for in this Constitution on the second Monday in September annually, and the lists of the votes

Meeting of first Legislature.

Elections for 1820.

for the Governor and Senators shall be transmitted, by the town and plantation clerks respectively, to the Secretary of State *pro tempore*, seventeen days at least before the last Wednesday in May next, and the President of the Convention shall, in presence of the Secretary of State, *pro tempore*, open and examine the attested copies of said lists so returned for Senators, and shall have all the powers, and be subject to all the duties, in ascertaining, notifying, and summoning the Senators, who appear to be elected, as the Governor and Council have, and are subject to, by this Constitution: *Provided*, he shall notify said Senators fourteen days at least before the last Wednesday in May, and vacancies shall be ascertained and filled in the manner herein provided; and the Senators to be elected on the said first Monday of April, shall be apportioned as follows:

Senators ap-
portioned,

The County of York shall elect three.

The County of Cumberland shall elect three.

The County of Lincoln shall elect three.

The County of Hancock shall elect two.

The County of Washington shall elect one.

The County of Kennebec shall elect three.

The County of Oxford shall elect two.

The County of Somerset shall elect two.

The County of Penobscot shall elect one.

And represen-
tatives.

And the members of the House of Representatives shall be elected, ascertained, and returned in the same manner as herein provided at elections on the second Monday of September, and the first House of Representatives shall consist of the following number, to be elected as follows:

York.

COUNTY OF YORK.

The towns of York and Wells may *each* elect two representatives; and each of the remaining towns may elect one.

Cumberland.

COUNTY OF CUMBERLAND.

The town of Portland may elect three representatives; North-Yarmouth, two; Brunswick, two; Gorham, two; Freeport and Pownal, two; Raymond and Otisfield, one; Bridgton, Baldwin and Harrison, one; Poland and Danville, one; and each remaining town one.

COUNTY OF LINCOLN.

Lincoln.

The towns of Georgetown and Phippsburg, may elect one representative; Lewiston and Wales, one; St. George, Cushing and Friendship, one; Hope and Appleton Ridge, one; Jefferson, Putnam and Patricktown Plantation one; Alma and Whitefield, one; Montville, Palermo, and Montville plantation, one; Woolwich and Dresden, one; and each remaining town one.

COUNTY OF HANCOCK.

Hancock.

The town of Bucksport may elect one representative; Deer Island, one; Castine and Brooksville, one; Orland and Penobscot, one; Mount Desert and Eden, one; Vinalhaven and Islesborough, one; Sedgwick and Bluehill, one; Gouldsborough, Sullivan and plantations No. 8 and 9 north of Sullivan, one; Surry, Ellsworth, Trenton and plantation of Mariaville, one; Lincolnville, Searsmont and Belmont, one; Belfast and Northport, one; Prospect and Swanville, one; Frankfort and Monroe, one; Knox, Brooks, Jackson and Thorndike, one.

COUNTY OF WASHINGTON.

Washington.

The towns of Steuben, Cherryfield and Harrington, may elect one representative; Addison, Columbia and Jonesborough, one; Machias, one; Lubec, Dennysville, plantations No. 9, No. 10, No. 11, No. 12, one; Eastport, one; Perry, Robinston, Calais, plantations No. 3, No. 6, No. 7, No. 15, and No. 16, one.

COUNTY OF KENNEBEC.

Kennebec.

The towns of Belgrade and Dearborn may elect one representative; Chesterville, Vienna and Rome, one; Wayne and Fayette, one; Temple and Wilton, one; Winslow and China, one; Fairfax and Freedom, one; Unity, Joy and 25 mile pond plantation, one; Harlem and Malta, one; and each remaining town one.

COUNTY OF OXFORD.

Oxford.

The towns of Dixfield, Mexico, Weld and Plantations No. 1 and 4, may elect one representative; Jay and Hartford, one; Livermore, one; Rumford, East Andover and Plan-

tations Nos. 7 and 8, one ; Turner, one ; Woodstock, Paris and Greenwood, one ; Hebron and Norway, one ; Gilead Bethel, Newry, Albany and Howard's gore, one ; Porter, Hiram and Brownfield, one ; Waterford, Sweden and Loveli one ; Denmark, Fryeburg and Fryeburg addition, one ; Buckfield and Sumner, one.

Somerset.

COUNTY OF SOMERSET.

The town of Fairfield may elect one representative ; Norridgewock and Bloomfield, one ; Starks and Mercer, one ; Industry, Strong and New-Vineyard, one ; Avon, Phillips, Freeman and Kingfield, one ; Anson, New-Portland, Embden and Plantation No. 1, one ; Canaan, Warsaw, Palmyra, St. Albans and Corinna, one ; Madison, Solon, Bingham, Moscow and Northhill, one ; Cornville, Athens, Harmony, Ripley, and Warrenstown, one.

Penobscot.

COUNTY OF PENOBSCOT.

The towns of Hampden and Newburg may elect one representative ; Orrington, Brewer, and Eddington and Plantations adjacent on the east side of Penobscot river, one ; Bangor, Orono and Sunkhaze Plantation, one ; Dixmont, Newport, Carmel, Hermon, Stetson, and Plantation No. 4, in the 6th range, one ; Levant, Corinth, Exeter, New-Charlestown, Blakesburg, Plantation No. 1 in 3d range, and Plantation No. 1 in 4th range, one ; Dexter, Garland, Guilford, Sangerville, and Plantation No- 3, in 6th range, one ; Atkinson, Sebec, Foxcroft, Brownville, Williamsburgh, Plantation No. 1. in 7th range, and Plantation No. 3, in 7th range, one.

Powers and duties of Secretary of State pro tem. in relation to the votes.

And the Secretary of State *pro tempore* shall have the same powers, and be subject to the same duties, in relation to the votes for Governor, as the Secretary of State has, and is subject to, by this Constitution : and the election of Governor shall, on the said last Wednesday in May, be determined and declared, in the same manner, as other electors of Governor are by this Constitution ; and in case of vacancy in said office, the President of the Senate, and Speaker, of the House of Representatives, shall exercise the office as herein otherwise provided, and the Counsellors, Secretary

and Treasurer, shall also be elected on said day, and have the same powers, and be subject to the same duties, as is provided in this Constitution; and in case of the death or other disqualification of the President of this Convention, or of the Secretary of State *pro tempore*, before the election and qualification of the Governor or Secretary of State under this Constitution, the persons to be designated by this Convention at their session in January next, shall have all the powers and perform all the duties, which the President of this Convention, or the Secretary *pro tempore*, to be by them appointed, shall have and perform.

SEC. 2. The period for which the Governor, Senators and Representatives, Counsellors, Secretary and Treasurer, first elected or appointed, are to serve in their respective offices and places, shall commence on the last Wednesday in May, in the year of our Lord one thousand eight hundred and twenty, and continue until the first Wednesday of January, in the year of our Lord one thousand eight hundred and twenty two.

Duration of the first Legislature.

SEC. 3. All laws now in force in this state, and not repugnant to this Constitution, shall remain, and be in force, until altered or repealed by the Legislature, or shall expire by their own limitation.

Laws now in force continue until repealed.

SEC. 4. The Legislature, whenever two thirds of both houses shall deem it necessary, may propose amendments to this Constitution; and when any amendments shall be so agreed upon, a resolution shall be passed and sent to the selectmen of the several towns, and the assessors of the several plantations, empowering and directing them to notify the inhabitants of their respective towns and plantations, in the manner prescribed by law, at their next annual meetings in the month of September, to give in their votes on the question, whether such amendment shall be made; and if it shall appear that a majority of the inhabitants voting on the question are in favor of such amendment, it shall become a part of this Constitution.

Constitution how it may be amended.

SEC. 5. All officers provided for in the sixth section of an act of the Commonwealth of Massachusetts, passed on the nineteenth day of June, in the year of our Lord one thousand

Persons in office to continue to hold their offices.

eight hundred and nineteen, entitled "An act relating to the separation of the District of Maine from Massachusetts Proper, and forming the same into a separate and Independent State," shall continue in office as therein provided ; and the following provisions of said act shall be a part of this Constitution, subject however to be modified or annulled as therein is prescribed, and not otherwise, to wit :

Part of a Law
of Massachu-
setts made a
part of the
Constitution.

"SEC. 1. Whereas it has been represented to this Legislature, that a majority of the people of the District of Maine are desirous of establishing a separate and Independent Government within said District: Therefore,

"Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, That the consent of this Commonwealth be, and the same is hereby given, that the District of Maine may be formed and erected into a separate and Independent State, if the people of the said District shall in the manner, and by the majority hereinafter mentioned, express their consent and agreement thereto, upon the following terms and conditions : And, provided the Congress of the United States shall give its consent thereto, before the fourth day of March next: which terms and conditions are as follows, viz.

"First. All the lands and buildings belonging to the Commonwealth, within Massachusetts Proper, shall continue to belong to said Commonwealth, and all the lands belonging to the Commonwealth, within the District of Maine, shall belong, the one half thereof, to the said Commonwealth, and the other half thereof, to the State to be formed within the said District, to be divided as is hereinafter mentioned ; and the lands within the said District, which shall belong to the said Commonwealth, shall be free from taxation, while the title to the said lands remains in the Commonwealth ; and the rights of the Commonwealth to their lands, within said District, and the remedies for the recovery thereof, shall continue the same, within the proposed State, and in the Courts thereof, as they now are within the said Commonwealth, and in the Courts thereof ; for which purposes, and for the maintenance of its rights, and recovery of its lands, the said Commonwealth shall be entitled to all other proper and legal remedies, and may appear in the Courts of the proposed State and in the Courts of the United States, holden therein ; and all rights of action for, or entry into lands, and of actions upon

bonds, for the breach of the performance of the condition of settling duties, so called, which have accrued, or may accrue, shall remain in this Commonwealth, to be enforced, commuted, released, or otherwise disposed of, in such manner as this Commonwealth may hereafter, determine: *Provided however, That,* whatever this Commonwealth may hereafter receive or obtain on account thereof if any thing, shall, after deducting all reasonable charges relating thereto, be divided, one third part thereof to the new State, and two third parts thereof to this Commonwealth.

“ Second. All the arms which have been received by this Commonwealth from the United States, under the law of Congress, entitled, “An act making provision for arming and equipping the whole body of militia of the United States, passed April the twenty third, one thousand eight hundred and eight, shall, as soon as the said District shall become a separate State, be divided between the two States, in proportion to the returns of the militia, according to which, the said arms have been received from the United States, as aforesaid.

“ Third. All money, stock, or other proceeds, hereafter derived from the United States, on account of the claim of this Commonwealth, for disbursements made, and expenses incurred, for the defence of the State, during the late war with Great Britain, shall be received by this Commonwealth, and when received, shall be divided between the two States, in the proportion of two thirds to this Commonwealth, and one third to the new State.

“ Fourth. All other property, of every description, belonging to the Commonwealth shall be holden and receivable by the same, as a fund and security, for all debts, annuities, and Indian subsidies, or claims due by said Commonwealth; and within two years after the said District shall have become a separate State, the Commissioners to be appointed as hereinafter provided, if the said States cannot otherwise agree, shall assign a just portion of the productive property, so held by said Commonwealth as an equivalent and indemnification to said Commonwealth, for all such debts, annuities, or Indian subsidies or claims, which may then remain due, or unsatisfied: and all the surplus of the said property, so holden, as aforesaid, shall be divided between the said Commonwealth and the said District of Maine, in the proportion of two thirds to the said Commonwealth, and one third to the said District—and if, in the judgment of the said Commission-

ers, the whole of said property, so held, as a fund and security, shall not be sufficient indemnification for the purpose, the said District shall be liable for and shall pay to said Commonwealth, one third of the deficiency.

“ Fifth. The new State shall, as soon as the necessary arrangements can be made for that purpose, assume and perform all the duties and obligations of this Commonwealth, towards the Indians within said District of Maine, whether the same arise from treaties, or otherwise ; and for this purpose shall obtain the assent of said Indians, and their release to this Commonwealth of claims and stipulations arising under the treaty at present existing between the said Commonwealth and said Indians ; and as an indemnification to such new State, therefor, this Commonwealth, when such arrangements shall be completed, and the said duties and obligations assumed, shall pay to said new State, the value of thirty thousand dollars, in manner following, viz : The said Commissioners shall set off by metes and bounds, so much of any part of the land, within the said District, falling to this Commonwealth, in the division of the public lands, hereinafter provided for, as in their estimation shall be of the value of thirty thousand dollars ; and this Commonwealth shall, thereupon, assign the same to the said new State, or in lieu thereof, may pay the sum of thirty thousand dollars at its election ; which election of the said Commonwealth, shall be made within one year from the time that notice of the doings of the Commissioners, on this subject, shall be made known to the Governor and Council ; and if not made within that time, the election shall be with the new State.

“ Sixth. Commissioners, with the powers and for the purposes mentioned in this act, shall be appointed in manner following : The Executive authority of each State shall appoint two ; and the four so appointed, or the major part of them, shall appoint two more ; but if they cannot agree in the appointment, the Executive of each State shall appoint one in addition ; not however, in that case, to be a citizen of its own State. And any vacancy happening with respect to the Commissioners, shall be supplied in the manner provided for their original appointment ; and, in addition to the powers herein before given to said Commissioners, they shall have full power and authority to divide all the public lands within the District, between the respective States, in equal shares, or moieties, in severalty, having regard to quantity, situation and quality ; they shall determine what lands shall

be surveyed and divided, from time to time, the expense of which surveys, and of the Commissioners, shall be borne equally by the two States. They shall keep fair records of their doings, and of the surveys made by their direction, copies of which records, authenticated by them, shall be deposited from time to time, in the archives of the respective States ; transcripts of which, properly certified, may be admitted in evidence, in all questions touching the subject to which they relate. The Executive authority of each State may revoke the power of either or both its Commissioners ; having, however, first appointed a substitute, or substitutes, and may fill any vacancy happening with respect to its own Commissioners ; four of said Commissioners shall constitute a quorum, for the transaction of business ; their decision shall be final, upon all subjects within their cognisance. In case said commission shall expire, the same not having been completed, and either State shall request the renewal or filling up of the same, it shall be renewed or filled up in the same manner, as is herein provided for filling the same, in the first instance, and with the like powers ; and if either State shall, after six months' notice, neglect or refuse to appoint its Commissioners, the other may fill up the whole commission.

“ *Seventh.* All grants of land, franchises, immunities, corporate or other rights, and all contracts for, or grants of land not yet located which have been or may be made by the said Commonwealth, before the separation of said District shall take place, and having or to have effect within the said District, shall continue in full force, after the said District shall become a separate State. But the grant which has been made to the President and Trustees of Bowdoin College, out of the tax laid upon the Banks within this Commonwealth, shall be charged upon the tax upon the Banks within the said District of Maine, and paid according to the terms of said grant ; and the President and Trustees, and the Overseers of said College, shall have, hold and enjoy their powers and privileges in all respects ; so that the same shall not be subject to be altered, limited, annulled or restrained, except by judicial process, according to the principles of law ; and in all grants hereafter to be made by either State, of unlocated land within the said District, the same reservations shall be made for the benefit of Schools, and of the Ministry, as have heretofore been usual, in grants made by this Commonwealth. And all lands heretofore granted by this Commonwealth, to any religious, literary, or eleemosynary corporation, or society, shall be free from taxation, while the same continues to be owned by such corporation, or society.

L A W S
OF THE
STATE OF MAINE.

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CHAPTER I.

An Act against Treason and Misprision of Treason.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That every person whether male or female, who shall commit the crime of treason against this State, and be thereof duly convicted in the Supreme Judicial Court, shall suffer the pains of death, by being hanged by the neck until they are dead. Punishment of Treason.

SEC. 2. *Be it further enacted,* That concealment or keeping secret of any treason, be deemed and taken only misprision of treason; and the offender therein shall forfeit to the use of this State, all his goods and chattels and the profits of his lands during his life, and shall and may be imprisoned for a term not less than two years, nor exceeding five years, at the discretion of the Court before whom he shall be convicted. Concealment of Treason—only misprision of Treason.

SEC. 3. *Be it further enacted,* That any person who shall know of any Treason to be committed (and is no party or consenter to it) and shall not, within a reasonable time, give information thereof, upon oath, to one of the Justices of the Supreme Judicial Court, or some Justice of the Peace within this State, to the end the offender or offenders therein may be apprehended and be amenable to Justice, shall be taken and deemed to be guilty of misprision of treason or concealment of treason. Crime and punishment of misprision of Treason.

SEC. 4. *Be it further enacted,* That all and every person and persons whatsoever, that shall be accused and indicted for Person indicted to have

copy of Indictment two days before arraignment.

Counsel to be assigned them.

Oaths of two witnesses necessary in case of misprision of Treason—unless, &c.

Prisoners to have copy of panel of jurors two days before trial: may have compulsory process for their witnesses.

No persons to be indicted after three years next following the offence.

treason, or for misprision of treason, shall have a true copy of the whole indictment delivered unto them, or any of them, two full days at least, before he or they shall be arraigned for the same, whereby to enable them, and any of them, respectively, to advise with, counsel thereupon, to plead and make their defence, and in case any person or persons, so accused and indicted, shall desire counsel, the Court before whom such person or persons shall be tried, or some Judge of that Court, shall, and is hereby authorized and required, immediately upon his or their request, to assign to such person or persons, such and so many counsel not exceeding two, as the person or persons shall desire to whom such counsel shall have free access at all seasonable hours.

SEC. 5. *Be it further enacted,* That no person or persons whatsoever shall be indicted, tried or convicted of misprision of treason, but by and upon the oaths and testimony of two lawful witnesses, either both of them to the same overt act, or one of them to one, and the other of them to another overt act of the same species of treason, unless the party indicted and arraigned, or tried, shall willingly without violence, in open Court confess the same.

SEC. 6. *Be it further enacted,* That all and every person and persons who shall be accused, indicted and tried for treason, as aforesaid, or for misprision of treason, shall have copies of the panel of the Jurors who are to try them, delivered unto them and every of them so accused and indicted respectively, two days at least before he or they shall be tried for the same: and that all persons so accused and indicted for any treason, as aforesaid, or for misprision of treason, shall have the like process of the court where they shall be tried, to compel their witnesses to appear for them at any such trial or trials, as is usually granted to compel witness to appear against them.

SEC. 7. *Be it further enacted,* That no person or persons whatsoever shall be indicted, tried or prosecuted for any treason, or for misprision of treason, that shall be committed or done in violation of this Act, unless the indictment for the same be found within three years next after the treason done or committed.

[Approved March 19, 1821.]

CHAPTER II.

An Act providing for the punishment of the crimes of Murder, Manslaughter, felonious Maims and Assaults, and Duelling, and for the prevention thereof.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall commit the crime of wilful murder, or shall be present, aiding and abetting, in the commission of such crime, or not being present, shall have been accessory thereto before the fact, by counselling, hiring, or otherwise procuring the same to be done, every such offender, who in the Supreme Judicial Court, shall be duly convicted of either of the felonies and offences aforesaid, shall suffer the punishment of death. And the Justices of the said Court, before whom the conviction shall be in cases of murder committed in a duel shall, and in other cases may, at their discretion, further sentence and order the body of such convict to be dissected and anatomized. And in case of further sentence, it shall be the duty of the sheriff to deliver the body of the convict, being dead, to a professor of anatomy and surgery in some public college or seminary, when it shall be required in his behalf, and otherwise to any surgeon or surgeons, who shall be attending at the place of execution, to receive the body, and will engage for the dissection and anatomizing thereof.

Punishment of murder or being accessory thereto before the fact.

Court may order body of convict to be dissected and anatomized :

Sheriff may deliver the dead body over for that purpose.

SEC. 2. *Be it further enacted,* That if any person, after a wilful murder done and committed as aforesaid, shall be accessory thereto, by knowingly receiving, harbouring, comforting, concealing, maintaining, or otherwise unlawfully assisting any principal offender, or accessory therein before the fact; every such accessory after the fact, who shall be thereof duly convicted in the Supreme Judicial Court, shall be punished by solitary imprisonment for such term, not exceeding six months, and by confinement afterwards to hard labour, for such term, not exceeding ten years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the nature and aggravation of the offence.

Punishment of accessories to the crime after the fact.

Punishment of
manslaughter.

SEC. 3. *Be it further enacted,* That if any person shall commit the crime of manslaughter, and shall be thereof duly convicted, every such offender shall be punished by solitary imprisonment, for such term not exceeding six months, and by confinement afterwards to hard labour, for such term not exceeding ten years, as the Court before whom the conviction may be, shall sentence and order ; or by fine not exceeding one thousand dollars, and imprisonment in the common gaol, for a term not exceeding three years, at the discretion of the Court, before whom the conviction may be.

Punishment
for maiming or
being an accessary
thereto.

SEC. 4. *Be it further enacted,* That if any person, with set purpose and aforethought malice, or intention to maim or disfigure, shall unlawfully cut out or disable the tongue, put out an eye, cut off an ear, slit the nose, or cut off the nose or lip, or cut off or disable a limb, or member of any person, every such offender, and every person privy to the intent aforesaid, who shall be present, aiding and abetting in the commission of such offence, or not being present, shall have counselled, hired or procured the same to be done, upon due conviction thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for such term, not exceeding one year, and by confinement to hard labour, or by imprisonment in the common gaol for such time, not exceeding ten years, commencing from the expiration of such solitary imprisonment, as the Justices of the said Court before whom the conviction may be, shall sentence and order, according to the nature and aggravation of the offence.

Punishment
for assault with
intent to
commit murder,
and being
accessary
thereto.

SEC. 5. *Be it further enacted,* That if any person being armed with a dangerous weapon, and with intent to commit murder, shall assault another, every such offender, and every person present aiding and abetting, or who shall be accessory before the fact, to the commission of the offence aforesaid, by counselling, hiring, or procuring the same to be done and committed, and who shall be thereof duly convicted, shall be punished by solitary imprisonment for such term, not exceeding one year, and by confinement afterwards to hard labour, for such term, not exceeding twenty years, as the Court before whom the conviction may be, shall sentence and order.

SEC. 6. *Be it further enacted,* That if any person with a dangerous weapon, and with an intention to maim or disfigure in any of the modes, mentioned in the fourth section of this Act, shall assault another ; or shall be present, aiding or abetting therein, or not being present, shall have counselled, hired or procured the same to be done, every such offender, who shall be thereof duly convicted, in the Supreme Judicial Court, shall be deemed a felonious assaulter, and shall be punished by solitary imprisonment, for such term, not exceeding six months, and by confinement afterwards to hard labor, or by imprisonment in the common gaol, for such term, not exceeding four years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the nature and aggravation of the offence.

Punishment
for assault with
intent to
maim, &c. and
being accessary
thereto.

SEC. 7. *Be it further enacted,* That if any person shall voluntarily engage in a duel, with rapier, a small sword, back sword, pistol, or other dangerous weapon, to the hazard of life, when no homicide shall ensue thereon ; and if any person shall, by word, message, or in any other manner, challenge another to fight in a duel, as aforesaid, when no duel shall be fought thereon, every such offender, and every person, who shall be knowingly a second, agent or abettor in such duel or challenge, upon due conviction of either of said offences in the Supreme Judicial Court, shall be punished as a felonious assaulter ; and for his further punishment, shall be disqualified from holding, and incapable of any office or place of honour, profit or trust under this State, during the term of twenty years from and after such conviction.

Punishment
for engaging
in a duel, giving
a challenge
or acting as
second or abettor :

on conviction,
shall be disqualified
from holding any
office for 20
years.

SEC. 8. *Be it further enacted,* That if any person shall accept a challenge to a duel, and shall consent to fight therein as aforesaid, when no duel shall thereupon ensue, every such offender, and every person who shall knowingly be a second, agent or abettor in such acceptance of a challenge, upon due conviction thereof in the Supreme Judicial Court, shall be punished by imprisonment in the common gaol, not exceeding one year, and shall be disqualified from holding, and incapable of any office or place of honour, profit or trust under this State, during the term of five years from and after such conviction.

Punishment
for accepting
a challenge—

on conviction,
disqualified
for holding any
office for five
years.

Punishment
for concealing
pregnancy, or
being deliver-
ed of a bast-
ard.

SEC. 9. *Be it further enacted,* That if any woman shall conceal her pregnancy, and shall willingly be delivered in secret by herself, of any issue of the body, male or female which shall by law, be a bastard, every such woman so offending, shall pay a fine not exceeding the sum of one hundred dollars, to the use of the State; to be recovered by information or indictment in any Court proper to try the said offence, or imprisoned, not exceeding three months, at the discretion of the Court.

Punishment
for endeavour-
ing to conceal
the death of
such child.

SEC. 10. *Be it further enacted,* That if any woman shall endeavour privately, either by herself, or the procurement of others, to conceal the death of any such issue of her body, which, if it were born alive, would by law be a bastard, so that it may not come to light, whether it were born alive or not, or whether it was murdered, or not, in every such case, the mother, so offending, shall be punished by solitary imprisonment for a term not exceeding three months, and confinement to hard labour, for a term not exceeding five years, at the discretion of the Court.

If woman be
indicted for
murder of such
child and for
both or either
of the above
offences in
same indict-
ment, Jury may
acquit of the
murder & con-
vict of both or
either of the
other offences.

SEC. 11. *Be it further enacted,* That if the Grand Jury shall, in the same indictment, charge any woman with the wilful murder of her infant bastard child, as well as with either or both the offences aforesaid, and it appear to the Jury of trials that she is guilty of the murder charged, she shall be thereupon convicted of murder, and suffer the pains of death as in case of murder; but if it doth not appear to the same Jury that she is guilty of the murder charged in the indictment, but only of either or both the offences aforesaid, then the same Jury may acquit her of the charge of murder, and find her guilty of the aforesaid offences or either of them, as the case may be.

[Approved February 28, 1821.]

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CHAPTER III.

An Act providing for the punishment of Rape, and for the prevention thereof.

Punishment of
rape and of

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any man shall

ravish, and carnally know any woman, by force, and against her will, or shall unlawfully and carnally know and abuse any woman child under the age of ten years, every such offender, and any person present, aiding and consenting to such rape, or accessory thereto before the fact, by counselling, procuring or commanding such rape to be committed, who shall be duly convicted in the Supreme Judicial Court, of either of the felonies and offences aforesaid, shall suffer the punishment of death.

SEC. 2. *Be it further enacted,* That if any person, after any rape committed as aforesaid, shall knowingly harbour, conceal, maintain or assist any principal offender therein, or any accessory thereto, before the fact, and shall be thereof duly convicted in the Supreme Judicial Court, every such accessory after the fact, shall be punished by solitary confinement, for such term, not exceeding three months, and by confinement to hard labour, for such term thereafter commencing, not exceeding ten years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

SEC. 3. *Be it further enacted,* That if any man, with intent to commit a rape as aforesaid, shall make an assault upon a woman or female child of the age of ten years and upwards, every such offender, and any person who shall consent, aid or assist therein, and shall be thereof duly convicted in the Supreme Judicial Court, shall be adjudged guilty of a felonious assault, and shall be punished by solitary imprisonment, for such term, not exceeding three months, and by confinement afterwards to hard labour, for such term not exceeding ten years, or by a fine not exceeding five hundred dollars, and by imprisonment in the common gaol for such term not exceeding one year, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the nature and aggravation of the offence.

SEC. 4. *Be it further enacted,* That when any person shall be convicted in the Supreme Judicial Court of having made an assault on any female child under the age of ten years, with an intent to commit a rape, he shall be punished by solitary imprisonment, not exceeding four months, and after-

being accessory thereto before the fact.

Punishment of accessories after the fact.

Punishment of assault, with intent to commit a rape, on woman, or child of 10 or more years old.

Punishment for an assault with such intent on a female child under ten years old.

wards by confinement to hard labour for any term of years, or for life, according to the circumstances and aggravation of the offence, as the Court in their discretion may think proper.
[Approved February 28, 1821.]

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CHAPTER IV.

An Act providing for the punishment of Incendiaries, and the perpetrators of other malicious mischief.

- SEC. 1.** *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall wilfully and maliciously set fire to the dwelling house of another, or to any out building, adjoining to such dwelling-house, and to any other building, and by the kindling of such fire or by the burning of such other building, such dwelling house shall be burnt in the night time, every such offender, and any person present, aiding, abetting or consenting, in the commission of such offence, or accessory thereto, before the fact, by counselling, hiring or procuring the same to be done, who shall be duly convicted before the Supreme Judicial Court of either of the felonies and offences aforesaid, shall suffer the punishment of death.
- SEC. 2.** *Be it further enacted,* That if any person shall wilfully and maliciously burn, in the day time, the dwelling house of another, or any out building adjoining to such dwelling house or any other building, whereby such dwelling house shall be burnt; or if any person shall wilfully and maliciously set fire to any meeting house, church, court house, town house, college, academy, or other building erected for public uses, or to the store, barn or stable of another, within the curtilage of any dwelling house, and by the kindling of such fire, such meeting house, or other building, erected for public uses, or such store, barn or stable, shall be burnt in the night time, every such offender, and any person present, aiding, abetting or consenting in the commission of such offence, or accessory thereto before the fact, by counselling, hiring or procuring the same to be done, who shall be duly convicted before the Supreme Judicial Court of either of the felonies and offences aforesaid, shall be punished by solitary imprisonment for such term not exceeding one year, as the

Burning dwelling house in night time,

punishable with death.

Punishment for burning dwelling house &c. in day time.

Punishment for burning public buildings or stores, barns &c. in night time;

or being accessory thereto before the fact.

Justices of the said Court, before whom the conviction may be, shall sentence and order, and by confinement afterwards to hard labor for life.

SEC. 3. *Be it further enacted,* That if any person shall wilfully and maliciously burn, in the day time, any meeting house or other building erected for public uses, or any store, barn or stable of another, within the curtilage of any dwelling house: or if any person shall wilfully and maliciously burn, by night or day, any other store, barn, stable, house or building whatsoever, or any ship or vessel lying in the body of any county; every such offender, and any person aiding or consenting in the commission of such offence, who shall be duly convicted thereof before the Supreme Judicial Court, shall be punished by solitary imprisonment, for such term, not exceeding one year, and by confinement afterwards to hard labor for such term, not exceeding ten years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the nature and aggravation of the offence.

for burning
such buildings
in day time.

SEC. 4. *Be it further enacted,* That if any person shall wilfully and maliciously burn any stack of corn, hay, grain, straw, cornstalks, flax, fences, piles of wood, boards, or other lumber; or any soil, grass, trees, poles or underwood, of another; and if any person shall wilfully and maliciously, passionately, cruelly or barbarously kill, wound, maim, or disfigure any one or more of the horses, sheep or cattle of another, every such offender, and any person aiding and consenting in the commission of such offence, who shall be duly convicted thereof before the Supreme Judicial Court, shall be punished by solitary imprisonment for such term, not exceeding six months; and by confinement afterwards to hard labor for such term not exceeding three years, or by fine not exceeding five hundred dollars, and by imprisonment in the common gaol, not exceeding one year, at the discretion of the Justices of the said Court, before whom the conviction may be, and as they shall sentence and order, according to the nature and aggravation of the offence.

—for burning
corn, hay, fences,
lumber &c.

—killing,
wounding or
disfiguring cat-
tle, horses and
sheep.

SEC. 5. *Be it further enacted,* That if any person, after any felony or offence done and committed, by any incendiary in any manner as aforesaid, shall knowingly harbour, conceal,

Punishment of
accessaries
after the fact.

maintain, assist or relieve such offender, or any accessory before the fact, in any such felony or offence, every such accessory after the fact, who shall be duly convicted thereof, before the Supreme Judicial Court, shall be punished by solitary imprisonment, for a term not exceeding one month, and by confinement afterwards to hard labour for a term not exceeding five years; or by a fine not exceeding one thousand dollars, and by imprisonment in the common gaol, not exceeding one year, at the discretion of the Justices of the said Court, before whom the conviction may be, and as they shall sentence and order thereupon, according to the nature and aggravation of the offence.

Punishment
for wilfully set-
ting fire to
woods without
leave

liable in dam-
ages also.

Parents or
masters of
minors offend-
ing liable for
penalty in cer-
tain cases.

Punishment
for cruelly
beating horses
or cattle.

SEC. 6. *Be it further enacted*, That if any person or persons shall wittingly and willingly set fire to any woods or lands, lying in common, or to woodland, or other land held in severalty and not his own, within this State without leave first had and obtained from the owners of the land or those who have a right to give the same leave, excepting in cases in which it may become necessary to make back fires to stop the progress or subdue any fire that may be spreading, the person so offending shall forfeit and pay for each offence, ten dollars, one moiety thereof to the use of the State and the other moiety thereof to the use of him or them that shall inform and sue for the same; and shall be liable, in a special action on the case, to pay damages to all persons injured by such fire, including the injury which may be done by any necessary back fire made for the purpose aforesaid. And in case any person under age shall offend against this section, such penalty shall be recovered of the parent or master respectively, of such person under age, unless it shall appear such person under age was employed or directed by some person, other than the parent or master; in which case the person so employing or directing shall be liable therefor; and the fines in this section mentioned may be recovered in an action of debt, with costs of suit.

SEC. 7. *Be it further enacted*, That if any person shall cruelly beat any horse or cattle, and be thereof convicted, before a Justice of the Peace, he shall be punished by fine not less than two dollars nor more than five dollars, or by

imprisonment in the common gaol for a term not exceeding thirty days, according to the aggravation of the offence.

[Approved February 24, 1821.]

CHAPTER V.

An Act against Sodomy and Bestiality.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That if any man shall commit the crime against nature with a man or male child, or any man or woman shall have carnal copulation with a beast, every such offender, being duly convicted thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment, for such term, not exceeding one year, and by confinement afterwards to hard labour for such term, not exceeding ten years, as the Justices of said Court, before whom the conviction may be shall sentence and order.

Crime of Sodomy.

Punishment.

[Approved Feb. 19, 1821.]

CHAPTER VI.

An Act providing for the punishment of Crimes of Burglary and other breaking and entering of buildings.

SEC. 1. BE it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person with intent to kill, rob, steal, commit a rape, or to do, or perpetrate any other felony, shall, in the night time, break and enter, or having with such felonious intent, entered, shall in the night time break a dwelling house, any person then being lawfully therein, and such offender being, at the time of such breaking or entering, armed with a dangerous weapon, or arming himself or herself in such house, with a dangerous weapon or committing an actual assault upon any person lawfully being in such house; every such offender, and any person present, aiding, assisting or consenting in such burglary, or accessory thereto before the fact, by counselling, hiring or procuring such burglary to be committed, who

Punishment of the crime of Burglary, the offender being armed with a dangerous weapon, or making an actual assault, and being accessory before the fact.

shall be duly convicted thereof in the Supreme Judicial Court, shall suffer the punishment of death.

Punishment of the offence when the offender is not so armed, & commits no assault on those in the house.

Accessories before the fact.

SEC. 2. *Be it further enacted,* That if any person, with intent to kill, rob, steal, commit a rape, or. to do or perpetrate any other felony, shall, in the night time, break and enter, or having, with such felonious intent entered, shall in the night time break a dwelling house, without being armed with a dangerous weapon, or without arming himself, or herself in such house with a dangerous weapon, and without committing an assault upon any person lawfully being in such house; every offender and every person present, aiding and abetting in such burglary, or accessory thereto before the fact, by counselling, hiring or procuring such burglary to be committed, who shall be duly convicted thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for such term not exceeding two years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, and by confinement afterwards to hard labour for life.

Punishment of accessories after the fact.

SEC. 3. *Be it further enacted,* That if any person, after any burglary committed as aforesaid, shall knowingly harbour, conceal, maintain, or assist any principal offender, or accessory thereto before the fact: every such accessory after the fact, who shall be thereof duly convicted in the Supreme Judicial Court, shall be punished by solitary imprisonment, for such term, not exceeding three months, and by confinement afterwards to hard labour, for such term not exceeding ten years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

Punishment when the offender enters a dwelling house with such intent in the night time without breaking, or in the day time by breaking any dwelling house or other building.

Accessories before the fact.

SEC. 4. *Be it further enacted,* That if any person, with intent to kill, rob, steal, commit a rape, or to do or perpetrate any other felony, shall, in the night time, enter without breaking, or in the day time break and enter, any dwelling house, or any out house thereto adjoining and occupied therewith, or any office, shop or warehouse or any ship or vessel lying within the body of a County: every such offender and every person present, aiding or abetting in the commission of such offence, or who shall have counselled, hired, or procured the same to be committed, being thereof duly

convicted in the Supreme Judicial Court, shall be punished by solitary imprisonment, for such term not exceeding six months, and by confinement afterwards to hard labour for such term not exceeding three years: or by a fine, not exceeding five hundred dollars, and imprisonment in the common gaol, not exceeding three years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

[Approved February 28, 1821.]

CHAPTER VII.

An Act providing for the punishment of the crimes of Robbery and other larcenies, and for the prevention thereof.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That the Supreme Judicial Court shall have exclusively the jurisdiction of all larcenies where the money, goods or other article or articles stolen, shall be alleged to exceed in amount or value, the sum of one hundred dollars, the said Supreme Judicial Court and the Circuit Courts of Common Pleas, within their respective Counties, shall have concurrent jurisdiction of all larcenies, where the money, goods or other article or articles stolen, shall not be alleged to exceed in amount or value, the sum of one hundred dollars; and every Justice of the Peace, within his proper County, shall have concurrent jurisdiction with the said Courts, of all larcenies, where the money, goods or other article or articles stolen, shall not be alleged to exceed in amount or value, the sum of five dollars. And any person duly convicted before a Justice of the Peace of any larceny, either as principal or as accessory before or after the fact, shall be punished by such fine, not exceeding five dollars, and imprisonment in the common gaol for such term, not exceeding twenty days, either or both, as the said justice, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

Supreme Jud. Court to have exclusive jurisdiction of larcenies above 100 dollars.

S. J. Court & C. C. Com. Pleas, concurrent jurisdiction of larcenies, not exceeding 100 dollars.

Justs. of Peace to have concurrent jurisdiction of larcenies not exceeding five dollars.

Mode of punishment before Jus. of Peace.

SEC. 2. *Be it further enacted,* That any person who shall feloniously steal, take and carry away of the property of another, any money, goods, or chattels, or any bond. prom-

Punishment of simple larceny.

Being accessary before the fact.

issory note, bill of exchange, or other bill, order or certificate, or any book of accounts for or respecting any money or goods, due or becoming due and payable, or to be delivered, or any deed or writing containing a conveyance of lands or other real estate, or any other valuable contract remaining in force, or any receipt, release or defeasance, or any writ, process, or public record, shall be deemed guilty of the crime of larceny; and every such offender, and any person present, aiding and abetting in any such larceny, or accessary thereto before the fact, by counselling, hiring or otherwise procuring the same to be done, who, before any Court having jurisdiction thereof, shall be duly convicted of either of the felonies and offences aforesaid, shall be punished, when the money, goods, or other article or articles stolen, shall not exceed in amount or value the sum of one hundred dollars, by solitary imprisonment for a term not exceeding six months, and by confinement afterwards to hard labour for a term not exceeding one year, or by a fine not exceeding one hundred dollars and imprisonment in the common gaol for a term not exceeding one year. And when the money, goods or other article or articles stolen, shall exceed in amount or value, the sum of one hundred dollars, then by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour for a term not exceeding three years, to be ordered by the Court before whom the conviction may be, according to the degree and aggravation of the offence.

Punishment on a second conviction as principal or accessory.

SEC. 3. *Be it further enacted*, That if any person having been before convicted of the crime of larceny, or as accessary thereto before the fact, shall afterwards commit or shall be alike accessory to another larceny, and shall be duly convicted thereof, before the Supreme Judicial Court; or if any person before the Supreme Judicial Court at one and the same term thereof, shall be duly convicted as principal or as accessory before the fact, in three distinct larcenies, every such offender shall be punished as a common and notorious thief, by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour for a term not less than three years and not exceeding fifteen years, to be ordered as aforesaid.

SEC. 4. *Be it further enacted*, That if any person in the night time, shall break and enter any shop, warehouse or office, not adjoining to, or occupied with, a dwelling house, or any ship or vessel, lying within the body of a County, and shall there commit a larceny, every such offender, and every person present, aiding, and abetting in the commission of such felony, or accessory thereto before the fact, by counselling, hiring or procuring the same to be committed, and being thereof duly convicted before the Supreme Judicial Court, shall be punished by solitary imprisonment for such term not exceeding one year, and confinement afterwards to hard labour for such term, not exceeding fifteen years, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

Punishment for breaking and entering shop, warehouse, or office in night time.

SEC. 5. *Be it further enacted*, That if any person in the night time, shall enter, without breaking, or in the day time, shall break and enter any dwelling house, or out houses thereto adjoining, and occupied therewith, or any office, shop, warehouse, ship or vessel, as aforesaid, the owner or other person being therein and put in fear, every such offender, and any person present, aiding and abetting in the commission of such felony, or accessory thereto before the fact, by counselling, hiring or otherwise procuring the same to be done, upon due conviction thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour for a term not exceeding ten years, to be ordered as aforesaid.

Punishment for entering a dwelling house &c. in night, without breaking, or in day time breaking and entering.

SEC. 6. *Be it further enacted*, That if any person shall in the day time commit any larceny in any dwelling house, office, shop, warehouse, ship or vessel, as aforesaid, or in the night time shall break and enter any church, meeting-house, court-house, town-house, college or academy, or other building erected for public uses, or any mill, malt-house, store, barn or stable, and shall commit any larceny therein, or shall be aiding and abetting in the commission of such felony, or shall be accessory thereto before the fact, by counselling hiring or otherwise procuring the same to be done, every such offender, upon conviction of either of the felonies

Punishment for committing larceny in dwelling-house, shop, office, &c. in day time, or breaking and entering in night a church or other public building, or store, barn, &c.

aforesaid, in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term not exceeding six months, and by confinement afterwards to hard labour, for a term not exceeding five years, to be ordered as aforesaid.

Punishment for robbery, when the offender is not armed with a dangerous weapon, nor intends to kill, &c.

SEC. 7. *Be it further enacted*, That any person, who shall by force and violence, or by other assault and putting in fear, feloniously steal, rob and take from the person of another, any money or goods, bank note, bill of exchange or other negotiable bill, note or order, due or in force, or any other property which may be the subject of larceny, shall be adjudged guilty of the crime of robbery; and every such offender, and any person present, aiding and abetting in the commission of such felony, or accessory thereto before the fact, by counselling, hiring or procuring the same to be done, who in the Supreme Judicial Court, shall be duly convicted of either of the felonies and offences aforesaid, shall be punished by solitary imprisonment for such term, not exceeding two years, and by confinement afterwards, to hard labour for life.

Punishment of robbery, when armed with dangerous weapon, and intending to kill, &c.

SEC. 8. *Be it further enacted*, That if any person shall commit an assault upon another, and shall rob, steal and take from his person, any money, goods or chattels, or any property which may be the subject of larceny, such robber being, at the time of committing such assault, armed with a dangerous weapon, with intent to kill or maim the person so assaulted and robbed; or if any such robber, being armed as aforesaid, shall actually strike or wound the person, so assaulted and robbed; every person so offending, and every person present, aiding and abetting in the commission of such felony, or who shall be accessory thereto before the fact, by counselling, hiring or procuring the same to be done and committed, and who shall be duly convicted thereof, shall suffer the punishment of death.

Death.

Punishment of assault with intent to rob—offender being armed with a dangerous weapon.

SEC. 9. *Be it further enacted*, That if any person being armed with a dangerous weapon, and with intent to commit robbery, shall assault another, every such offender, and every person present, aiding and abetting, or who shall be accessory before the fact, to the commission of the offence aforesaid, by counselling hiring or procuring the same to be done and committed, and who shall be thereof duly convicted,

shall be punished by solitary imprisonment* for such term, not exceeding one year, and by confinement afterwards to hard labour for such term, not exceeding twenty years, as the Court, before whom the conviction may be, shall sentence and order.

SEC. 10. *Be it further enacted,* That if any person shall commit any other larceny from the person of another, either openly and violently, or privily and fraudulently, every such offender, and any person present, aiding and abetting in the commission of such felony, or accessory thereto before the fact, by counselling, hiring or otherwise procuring the same to be done, who shall be duly convicted in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour for a term not exceeding five years, to be ordered by the Justices of the said Court, before whom the conviction may be, according to the aggravation of the offence.

Punishment of any other larceny from person.

SEC. 11. *Be it further enacted,* That if any person with a dangerous weapon, or other actual violence, and with intent to steal, in manner as aforesaid, shall assault another, every such offender, and any person present, aiding and assisting therein, or who shall have counselled or procured the same to be done, shall be deemed a felonious assaulter; and upon due conviction thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour for a term, not exceeding ten years, to be ordered as aforesaid.

Punishment of assault with violence, or dangerous weapon with intent to steal.

SEC. 12. *Be it further enacted,* That if any person shall knowingly harbour, conceal or maintain any principal felon or accessory before the fact, in any robbery or larceny, committed in any manner as aforesaid, or shall receive or shall aid in concealing any money, goods or other article stolen as aforesaid, knowing the same to have been so stolen, in any such manner as aforesaid, every such offender upon due conviction of either of the offences as aforesaid, shall be deemed an accessory after the fact to the same robbery or larceny, and shall be punished by solitary imprisonment for such term not exceeding six months and by

Punishment of accessories to robbery or larceny after the fact.

confinement afterwards to hard labour for such term not exceeding three years, or by a fine not exceeding five hundred dollars, and by imprisonment in the common gaol, for such term not exceeding three years, or either of them, as the Justices of Court, before whom the conviction may be, shall and may sentence and order, according to the nature and aggravation of the offence.

Accessory to such felony may be prosecuted for misdemeanor, though principal is not convicted or prosecuted.

SEC. 13. *Be it further enacted,* That any person charged with the receipt or concealment of money, goods or other article stolen in any manner as aforesaid, knowing the same to have been stolen, may be prosecuted therefor as for a misdemeanor, although the principal felon chargeable, or charged with the larceny, shall not have been prosecuted or convicted; and upon due conviction thereof before any Court having jurisdiction of the principal offence, shall be punished in the same degree and manner, as an accessory after the fact might be, being alike convicted; but after prosecution for such misdemeanor, the person charged shall not be liable to be prosecuted as an accessory after the fact in the same larceny.

Punishment on a second conviction as receiver of stolen goods, or on conviction of three distinct offences of same kind, at same term.

SEC. 14. *Be it further enacted,* That if any person, having been before convicted as a receiver of money, goods or other articles stolen in any manner as aforesaid, shall afterwards knowingly receive or aid in the concealment of any other money, goods or other articles stolen, and shall be duly convicted thereof before the Supreme Judicial Court; or if any person shall be alike duly convicted before the Supreme Judicial Court, in the same term thereof, as a receiver of any money, goods or other articles aforesaid, stolen in any manner as aforesaid, in three distinct acts of receiving or concealing as aforesaid, every such offender shall be deemed a common receiver of stolen goods, and shall be punished by solitary imprisonment for such term, not exceeding one year, and by confinement afterwards to hard labour for such term, not less than three years, and not exceeding ten years, as the Justices of the said Court, before whom the conviction may be shall sentence and order, according to the nature and aggravation of the offence.

SEC. 15. *Be it further enacted,* That when any person, convicted for the first offence as a receiver of stolen goods,

or as accessory, after the fact, in any simple larceny and not adjudged to be a common receiver of stolen goods, shall make satisfaction to the party injured by such larceny to the full amount of the money, goods or articles stolen and not restored, the Justices of the Court before whom the conviction may be, shall exempt such receiver and accessory from the penalty of confinement of hard labour.

Case, in which Court may exempt convict from punishment by hard labour.

SEC. 16. *Be it further enacted,* That in every case of a conviction of larceny as aforesaid, the Justices of the Court before whom the conviction may be, shall have authority, at the prayer of the prosecutor therein, and at their discretion, to order for him or her a meet recompense, not exceeding his or her actual expenses, with a reasonable allowance for time and trouble in such prosecution, to be paid by the County Treasurer; and all payments which shall be made by any County Treasurer, pursuant to any order which may be granted as aforesaid, shall be the proper charge of this State, and shall be allowed in the manner which is or shall be provided for the reimbursement to the several Counties of other costs arising in criminal prosecutions.

Court may allow compensation to prosecutor for time and trouble;

—same to be charged to the State.

SEC. 17. *Be it further enacted,* That it shall be the duty of any Sheriff or other officer who shall be charged with, or lawfully employed in, apprehending and arresting any person accused of the crime of larceny or robbery, or as accessory therein, in any manner as aforesaid, to seize and secure the money, goods or other articles aforesaid, alleged to be stolen or to have been obtained by such larceny or robbery, and which shall be found in the possession of such accused person, or which shall be waved by him or her in flying from justice. And of the money, goods or other articles aforesaid, which shall be so found and secured, a true inventory or schedule shall be made in, or annexed to the return of such Sheriff or other officer, upon the warrant or process which shall have been issued for the arrest of any person accused as aforesaid; and such Sheriff or other officer shall be accountable for the money, goods or other articles thereby seized and secured. And whenever the conviction of any person accused as aforesaid, shall be had upon the prosecution, and by the care and diligence of the owner of any money, goods or articles, found and seized as aforesaid, such

Sheriff when he arrests a person accused—to seize goods, money, &c. and make inventory of them to be annexed to his return.

Sheriff accountable for such goods, &c.

on conviction
to be deliver-
ed to owner.

owner shall and may have restitution thereof immediately after such conviction, by an order in open Court, or by a writ of restitution as the case may require.

Convicts, sen-
tenced to hard
labour to be
charged with
value of goods
stolen and not
restored,

to be paid
from his earn-
ings, &c.

Court may
empower own-
er of goods to
dispose of con-
vict in service
—in case.

Proviso.

SEC. 18. *Be it further enacted,* That whenever, upon any conviction as aforesaid, such convict shall be sentenced to confinement to hard labour, such owner prosecuting as aforesaid, shall be allowed against each and every convict, the full amount or value of the money, goods or other articles stolen or obtained by such larceny, and not restored or satisfied for, to be charged against such convict at his or her place of confinement under such sentence, and to be paid from his or her net earnings, as the same shall accrue, and so far as they may extend. And when such convict shall be sentenced to fine or imprisonment in the common gaol, he or she shall be required by the sentence to pay to such owner prosecuting as aforesaid, the full amount or value of the money, goods or other article or articles stolen and not restored or satisfied for; and if any such convict shall be unable to make restitution, or pay the amount or value as aforesaid, the Justices of the Court before whom the conviction may be, may further sentence and order him or her to make satisfaction to such owner by service, who shall thereupon be empowered to take such convict in service, or to dispose of him or her to any person for such term of time, not exceeding three years, as shall be ordered by the said Justices: *Provided however,* That no such convict shall be held in gaol for such satisfaction of the amount or value, as aforesaid, for a longer term than thirty days, unless such owner shall give security to the keeper of the gaol, to satisfy the charge of keeping such prisoner from and after that time, according to the rate allowed for keeping prisoners in the same gaol; and if such owner shall refuse or neglect so to do, and shall not take or dispose of such prisoner, the keeper shall no longer keep such prisoner for that purpose, but may set him or her at liberty, after the expiration of the term of imprisonment, if any, ordered by the sentence, and after the payment of the costs of Court, and his own charges of imprisonment; and if he or she be unable to pay the same, upon application by the keeper of the gaol to any two Jus-

ices of the quorum, within the same County, they are hereby empowered to determine the sum to be paid, and to order such prisoner to make satisfaction by service, for such reasonable time, not exceeding two years, as they may assign, for which time the keeper may thereupon dispose of such prisoner in service to any citizen of the United States: And if he or she cannot be so disposed of, after being confined three months, for costs, or fine and costs only, the Justices of the Circuit Court of Common Pleas, within and for the same County, may, at their discretion, order such prisoner to be discharged upon such security as they may judge proper.

SEC. 19. *Be it further enacted*, That when any person, charged with the crime of larceny, or as an accessory therein, or as a receiver of money, goods or other articles stolen as aforesaid, shall and may be let to bail, the recognisance for the appearance of such person, shall be taken, with sufficient surety, or sureties, in such sum as may be reasonably required for that purpose; with a further additional sum which shall be double the amount or value of the money, goods or articles charged to have been stolen or obtained by such larceny; and when such recognisance shall be forfeited by default, the Justices of the Court before whom judgment may be rendered thereon, shall order the amount or value of the money, goods, or other articles stolen or obtained as aforesaid, to be paid out of the sum which shall be collected on such recognisance, to the owner of such money, goods or other articles, provided he shall have been the prosecutor.

Persons charged with larceny, &c. to recognise in a sum double the value of the goods — besides the sum required to secure their appearance.

[Approved March 19, 1821.]

CHAPTER VIII.

An Act against Blasphemy, and profane Cursing and Swearing.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That if any person shall wilfully blaspheme the holy name of God, by denying, cursing, or contumeliously reproaching God, his creation, government, or final judging of the world, or by cursing, or re-

Crime of blasphemy described.

proaching Jesus Christ, or the Holy Ghost, or by cursing or contumeliously reproaching the holy word of God, that is, the canonical scriptures, contained in the Books of the Old and New Testaments, or by exposing them, or any part of them, to contempt and ridicule ; which books are as follows : Genesis, Exodus, Leviticus, Numbers, Deuteronomy, Joshua, Judges, Ruth, Samuel, Samuel, Kings, Kings, Chronicles, Chronicles, Ezra, Nehemiah, Esther, Job, Psalms, Proverbs, Ecclesiastes, the Song of Solomon, Isaiah, Jeremiah, Lamentations, Ezekiel, Daniel, Hosea, Joel, Amos, Obadiah, Jonah, Micah, Nahum, Habakkuk, Zephaniah, Haggai, Zechariah, Malachi, Matthew, Mark, Luke, John, Acts, Romans, Corinthians, Corinthians, Galatians, Ephesians, Philipians, Colossians, Thessalonians, Thessalonians, Timothy, Timothy, Titus, Philemon, Hebrews, James, Peter, Peter, John, John, John, Jude, Revelations ; every person so offending, shall be punished by solitary imprisonment for a term not

Punishment of blasphemy

exceeding three months, and confinement to hard labour, for a term not exceeding five years. And whereas the horrible practice of profane cursing and swearing is inconsistent with the dignity and rational cultivation of the human mind, with a due reverence of the Supreme Being and his Providence, and hath a natural tendency to weaken the solemnity and obligation of oaths, lawfully taken in the administration of justice ; to promote falsehood, perjury, blasphemy, and dissoluteness of manners, and to loosen the bonds of civil society :

Punishment of profane cursing and swearing.

SEC. 2. *Be it therefore enacted*, That if any person, who has arrived at the age of discretion shall profanely curse or swear, and shall be thereof convicted, such person, so offending, shall forfeit and pay a sum not exceeding two dollars, nor less than one dollar, according to the aggravation of the offence and the quality and circumstances of the offender, in the judgment of the Court, or Justice of the Peace before whom the conviction may be ; and in case the same person shall, after one conviction as aforesaid, offend a second time, such offender shall forfeit and pay, upon such second conviction, double the sum forfeited on the first conviction ; and in case the same person shall, after two convictions, as aforesaid, again offend, such offender shall forfeit and pay, upon each and every subsequent conviction, treble the sum for-

Double penalty on second conviction.

Treble penalty on third conviction.

felited on the first conviction, one moiety, of the forfeitures aforesaid, to be to the use of the town, in which the offence shall be committed, and the other moiety thereof to the use of the person or persons, who shall make complaint thereof, or prosecute for the same: and provided also such prosecution be commenced within twenty days after the offence be committed.

Limitation of prosecution.

[Approved February 24, 1821.]

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CHAPTER IX.

An Act providing for the due observation of the Lord's day.

Whereas the observance of the Lord's day is highly promotive of the welfare of a community, by affording necessary seasons for relaxation from labour and the cares of business; for moral reflections and conversation on the duties of life, and the frequent errors of human conduct; for public and private worship of the Maker, Governor and Judge of the world; and for those acts of charity which support and adorn a Christian Society: And whereas some thoughtless and irreligious persons, inattentive to the duties and benefits of the Lord's day, profane the same, by unnecessarily pursuing their worldly business and recreations on that day, to their own great damage, as members of a Christian Society: to the great disturbance of well disposed persons, and to the great injury of the community, by producing dissipation of manners and immoralities of life.

Preamble.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That no traveller, drover, waggoner, teamster, or any of their servants, shall travel on the Lord's day, or any part thereof, (except from necessity or charity) under a penalty not less than four dollars nor more than six dollars and sixty six cents; which penalty may be recovered with costs of prosecution, upon complaint before any Justice of the Peace in the County where the offence may be committed; one moiety thereof to the complainant and the other moiety to the use of the County within which the offence may be committed; or before the Circuit Court of Common Pleas of the same County by presentment of the Grand Jury, in which case the whole penalty shall enure to the benefit of the County: *Provided however,* That all prosecutions for said penalty shall be commenced within six months after the offence was committed, unless the offender resides without the State.

Travelling, teaming, &c. on Lord's day prohibited.

Penalty, how recovered and applied.

Limitation of prosecution.

SEC. 2. *Be it further enacted,* That no person or persons whatsoever shall keep open his, her, or their shop, ware-

Business and amusements unlawful.

house, or workhouse, nor shall, upon land or water, do any manner of labour, business, or work, (works of necessity and charity only excepted) nor be present at any concert of music, dancing or any public diversion, show or entertainment, nor use any sport, game, play, or recreation, on the Lord's day, or any part thereof, upon penalty of a sum not exceeding six dollars and sixty-six cents, nor less than four dollars for each offence.

Innholders not to suffer drinking, idleness or play in their houses.

Penalty for so doing.

SEC. 3. *Be it further enacted*, That no vintner, retailer of strong liquors, innholder or other person keeping a house of public entertainment, shall entertain or suffer any of the inhabitants of the respective towns where they dwell, or others not being travellers, strangers, or lodgers in such houses, to abide and remain in their houses, yards, orchards or fields, drinking, or spending their time either idly or at play or doing any secular business on the Lord's day or any part thereof, on penalty of three dollars and thirty-three cents, payable by such vintner, retailer or innholder, or person keeping such house of entertainment, for each person so entertained or suffered; and every person so drinking or abiding (except as aforesaid,) shall pay a fine not less than two dollars, nor more than four, for each offence; and every such licensed person, upon any conviction after the first, shall pay a fine of six dollars and sixty-six cents, for each offence: and having been three times convicted, shall be debarred from renewing his license forever after. And although it is the sense of this Legislature, that the time commanded in the sacred Scriptures to be observed as holy time, includes a natural day, or twenty-four hours; yet whereas there is a difference of opinion concerning the beginning and ending of the Lord's day among the good people of this State, and this Legislature being unwilling to lay any restrictions which may seem unnecessary or unreasonable to persons of sobriety and conscience:

Limits of the Lord's day.

SEC. 4. *Be it therefore enacted*, That all the foregoing regulations, respecting the due observation of the Lord's day, shall be construed to extend to the time included between the midnight preceding and the sun setting of the same day.

SEC. 5. *Be it further enacted,* That no person shall be present at any concert of music, dancing or other public diversion, nor shall any person or persons use any game, sport, play or recreation, on the land or water, on the evening next preceding or succeeding the Lord's day, on pain of three dollars and thirty-three cents for each offence; and no retailer, innholder, or person licensed to keep a public house, shall entertain, or suffer to remain, or be in their houses or yards or other places appurtenant, any person or persons, (travellers, strangers or lodgers excepted,) drinking or spending their time on the said evenings on penalty of three dollars.

No person may attend concerts or public diversion, &c. on Saturday or Sunday evening.

SEC. 6. *Be it further enacted,* That the fines and penalties aforesaid, shall be one moiety thereof to the town wherein the offence shall be committed, and the other moiety thereof to any person or persons who shall inform and sue for the same; to be recovered by a complaint to a Justice of the Peace, with costs of suit, or the said fines may be recovered by presentment of the Grand Jury before the Circuit Court of Common Pleas, in the county wherein the offence or offences shall be committed, and when thus recovered, shall enure to the town wherein the offence shall be committed. And whereas the public worship of Almighty God is esteemed by Christians an essential part of the due observance of the Lord's day and requires the greatest decency and reverence for a due performance of the same:

Fines and penalties—how recovered.

SEC. 7. *Be it further enacted,* That if any person shall on the Lord's day, within the walls of any house of public worship, behave rudely or indecently, he or she shall pay a fine not more than seven dollars nor less than one dollar.

Indecent behaviour in church, &c. how punished.

SEC. 8. *Be it further enacted,* That if any person or persons, either on the Lord's day, or at any other time, shall wilfully interrupt or disturb any assembly of people met for the public worship of God within the place of their assembly, or out of it, he or they shall severally pay a fine not exceeding thirty-three dollars nor less than three dollars.

Disturbing public worship, how punished.

SEC. 9. *Be it further enacted,* That no person shall serve or execute any civil process, from midnight preceding to midnight following the Lord's day: but the service thereof shall be void, and the person serving the same shall be as

Civil process not to be served on Lord's day.

liable to answer damages to the party aggrieved, as if he had done the same, without any such civil process.

Tythingmen,
their duty and
oath.

SEC. 10. *Be it further enacted,* That the Tythingmen chosen, or which shall be chosen in the several towns within this State, shall be held and obliged to inquire into and inform of all offences against this act; and all such Tythingmen as shall be hereafter chosen, shall take the following oath:—You, being chosen a Tythingman for the town of —, for the year ensuing, and until another shall be chosen in your room, do solemnly swear, that you will diligently attend to, and faithfully execute the duties of the said office, without partiality, and according to your best discretion and judgment. *So help you GOD.* And every such Tythingman is hereby authorized and empowered, to enter into any of the rooms and other parts of an inn or public house of entertainment, on the Lord's day, and the evening preceding and succeeding; and if such entrance shall be refused to any Tythingman, the landlord or licensed person, shall forfeit the sum of seven dollars for each and every offence: And the said Tythingmen are hereby further authorized and empowered, within their respective towns, to examine all persons whom they shall have good cause, from the circumstances thereof, to suspect of unnecessarily travelling as aforesaid, on the Lord's day, and to demand of all such persons the cause thereof, together with their names and places of abode; and if any person shall refuse to give answer, or shall give a false answer to such demand, he shall pay a fine not exceeding thirteen dollars, nor less than three dollars, and if the reason given for such travelling shall not be satisfactory to such Tythingman, he shall enter a complaint against the person travelling, before a Justice of the Peace in the County where the offence is committed, if such person lives in such County, otherwise shall give information thereof to some Grand Juryman, to be by him laid before the Grand Jury, for their consideration and presentment.

Oath of tythingmen competent evidence in cases.

SEC. 11. *Be it further enacted,* That the oath of any Tythingman shall be deemed full and sufficient evidence, in any trial for any offence against this act, unless in the judgment of the Court of Justice, the same shall be invalidated by other evidence that may be produced.

Sec. 12. *Be it further enacted,* That the special authority given by this act to Tythingmen, for preventing the breaches thereof, shall not be construed or understood to exempt any Sheriff, Grand Jurors, Constables, or other officers or persons whatsoever, from any obligation or duty, to cause this act to be put in execution, but they shall be held to take due notice and prosecute all breaches thereof, such special authority notwithstanding.

Duty of sheriffs, grand jurors, and constables.

Sec. 13. *Be it further enacted,* That all the penalties and fines, incurred and paid for any of the offences aforesaid, mentioned in the seventh, eighth and tenth sections of this act shall be for the use of the State. And that all said offences, the penalties against which exceed seven dollars, shall be prosecuted by presentment to the Grand Jury, before the Circuit Court of Common Pleas, in the County wherein the offence may be committed: But all offences, the penalty whereof does not exceed seven dollars, except the offender lives out of the County in which the offence may be committed, shall be prosecuted by complaint before a Justice of the Peace in such County: But when the offender lives out of such County, he may be prosecuted by presentment as aforesaid, although the penalty does not exceed seven dollars.

Fines and penalties, how recovered and appropriated.

[Approved February 5, 1821.]

CHAPTER X.

An Act for the Punishment of Adultery, Polygamy, Lewdness and Fornication.

Sec. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any man or woman shall commit adultery, and be thereof convicted, he or she shall be punished by solitary imprisonment for a term not exceeding three months, and confinement to hard labour for a term not exceeding five years.

Punishment of adultery.

Sec. 2. *Be it further enacted,* That if any person within this State, being married, shall marry any person, the former husband or wife being alive, or who shall continue to live so married, and being thereof convicted, shall be punished by solitary imprisonment for a term not exceeding three months.

Persons while married not to marry again.

Penalty for bigamy.

Proviso in case of either party's absence for seven years beyond sea and not known to be living;

or desertion by husband for seven years, in certain cases.

Proviso, as to the innocent party in case of divorce.

Punishment of lewd and lascivious cohabitation, and open and gross lewdness.

Punishment of fornication.

and by confinement to hard labour for a term not exceeding five years: *Provided always*, That this act shall not extend to any person whose husband or wife shall be continually remaining beyond sea, by the space of seven years together, or whose husband or wife shall absent him or herself, the one from the other, by the space of seven years together; the one of them in either case not knowing the other to be living within that time, nor to the wife of any married man who shall willingly absent himself from his said wife, by the space of seven years together, without making suitable provision for her support and maintenance in the mean time, if it shall be in his power so to do; nor to any person that is or shall be at the time of such marriage divorced, by sentence of any Court whatsoever, which has, or may have legal jurisdiction for that purpose, unless such person is the guilty cause of such divorce, nor to any person for or by reason of any former marriage had or made, or hereafter to be had or made within the age of consent.

SEC. 3. *Be it further enacted*, That if any man and woman, either or both of whom being then married, shall lewdly and lasciviously associate and cohabit together, or if any man or woman, married or unmarried, shall be guilty of open gross lewdness and lascivious behaviour, and shall be thereof convicted before the Justices of the Supreme Judicial Court, they shall be punished by solitary imprisonment for a term not exceeding three months, and confinement to hard labour for a term, not exceeding five years.

SEC. 4. *Be it further enacted*, That if any man shall commit fornication with any single woman, the man or woman so offending and being thereof convicted before the Circuit Court of Common Pleas, shall be punished by imprisonment in the common gaol for a term not less than ten days; nor more than sixty days: or shall be sentenced to pay a fine not less than twenty dollars, nor more than one hundred dollars, as the Court may direct.

[Approved February 28, 1821.]

FORGERY AND COUNTERFEITING.

CHAPTER XI.

An Act against Forgery and Counterfeiting.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall falsely make, alter, forge or counterfeit, or shall procure to be falsely made, altered, forged or counterfeited, or shall willingly aid or assist in falsely making, altering, forging or counterfeiting any public record, any certificate or attestation of a Justice of the Peace, Public Register, Notary Public, Clerk of any Court, Town Clerk, or other public officer, in any matter wherein such their certificate or attestation is receivable and may be taken as legal proof; any charter, deed, will, testament, bond or writing obligatory, letter of attorney, policy of insurance or bill of exchange; any promissory note, order, acquittance or discharge, for or upon the payment of money or delivery of goods; or any acceptance of a bill of exchange or any endorsement or assignment of a bill of exchange or promissory note, for the payment of money; any accountable receipt for money or goods, or for any note, bill or security for money or goods; or any lottery ticket in any lottery legally authorized and licensed within this State, or shall utter or publish as true, any such false, altered, forged or counterfeited record, certificate or attestation, charter, deed, will, testament, bond or writing obligatory, letter of attorney, policy of insurance, bill of exchange, promissory note, acceptance, endorsement, assignment, order, acquittance, discharge, accountable receipt or lottery ticket, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud any person, or any body politic or corporate, then every person so offending, in either of the particulars aforesaid, who shall be thereof duly convicted, in the Supreme Judicial Court, shall be punished by solitary imprisonment, for a term not exceeding six months, and by confinement afterwards, to hard labour, for a term not less than two years, and not exceeding ten years.

Forgery of public records & certificates and private securities, &c.

or uttering them as true, &c. how punished

on conviction in the S. J. Court.

SEC. 2. *Be it further enacted,* That if any person shall falsely make, alter, forge or counterfeit, or shall procure to

Punishment for forging

bills of credit,
bank bills,
&c.

or aiding in
altering or rendering
current as true, any
such, knowing
them to be
false,

or possessing
such, knowingly,
with intent to pass as
true.

Punishment
for uttering or
tendering in
payment, false
bills, notes,
&c. knowingly.

be falsely made, altered, forged or counterfeited; or shall willingly assist in falsely making, altering, forging or counterfeiting, any note, certificate, or other bill of credit, which hath been or may be, issued by the Treasurer or other Commissioner or Commissioners duly authorized, for any debt of this State; or any bank bill, or promissory note payable to the bearer, signed in behalf of any company or corporation, by law licensed and authorized as a bank, within this State, or payable and demandable therein, at the office of any banking company incorporated by any law of the United States; or if any person having knowledge of such false making, altering, forging or counterfeiting, shall willingly aid or assist in altering or rendering current as true, any such false altered, forged or counterfeited notes, certificates, bills of credit, bank bills, or notes, and for that purpose shall possess, at any one time, any number not less than ten of such similar false, altered, forged, or counterfeited notes, certificates or bills of credit, bank bills or notes, knowing the same to be false, altered, forged or counterfeit as aforesaid, with intent to utter or pass the same and thereby to injure or defraud this State, any body politic or corporate, or any person or persons, then every person, so offending, in either of the particulars aforesaid, who shall be thereof duly convicted in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour, for and during his or her life.

SEC. 3. *Be it further enacted,* That if any person shall utter, or tender in payment as true, any such false, altered, forged or counterfeit note, certificate or bill of any debt of this State, bank bill, or promissory note payable to the bearer, by any bank as aforesaid, knowing the same to be false, altered, forged or counterfeit, with intent to injure or defraud this State, any body politic or corporate, or any person or persons; every person so offending, and who shall be duly convicted thereof, in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term not exceeding thirty days; and by confinement afterwards to hard labour for a term not exceeding three years; or by a fine not exceeding one thousand dollars, and by

binding to the good behaviour for two years, at the discretion of the Justices of the said Court before whom the conviction may be. And if after any such conviction, the same person shall be guilty a second time of the like offence, and shall be duly convicted thereof in the Supreme Judicial Court; or if in the Supreme Judicial Court at the same term thereof any person shall be duly charged and convicted of the said offence, in three several instances, then such person may be adjudged to be a common utterer of counterfeit bills, and shall be punished by solitary imprisonment for a term not exceeding one year, and by confinement afterwards to hard labour for a term not less than two years, and not exceeding ten years.

Punishment
on second con-
viction;

or on convic-
tion of three
several of-
fences at same
term.

SEC. 4. *Be it further enacted*, That if any person shall bring into or shall have in his possession within this State, any false, forged and counterfeit bill or bills, note or notes in the similitude of the bills or notes payable to the bearer thereof, issued by or for any bank or banking company, which is or shall be established within this State, or in any other part of the United States, for the purpose of rendering the same current as true, or with intent to pass the same, knowing the same to be false, forged and counterfeit, every such offender upon due conviction thereof, before the Supreme Judicial Court, shall be punished by solitary imprisonment, for such term, not exceeding three months; and by confinement afterwards to hard labour, for such term not exceeding three years; or by a fine not exceeding one thousand dollars, and imprisonment in the common gaol not exceeding one year, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

Punishment
for having, or
bringing into
the State, bank
bills, with in-
tent to pass,
&c.

SEC. 5. *Be it further enacted*, That in all prosecutions for forgery, or counterfeiting any bank bills or promissory notes, of any of the banks mentioned and described in the second, third and fourth sections of this Act; or for uttering, publishing, or tendering in payment as true any such forged or counterfeit bills or notes, or for having the possession of any such forged or counterfeit bills or notes with intent to pass the same, the testimony of the President or Cashier of such banks may be dispensed with, if the place of residence of such President or Cashier shall exceed the distance of

Testimony of
President or
Cashier may,

incertain cases
be dispensed
with—and oth-
er proof admit-
ted.

forty miles from the place of trial; but in such cases it shall be lawful to admit the testimony of any witness acquainted with the signature of the officers of said banks, or who may have knowledge of the difference between the true and the counterfeit bills or notes of said banks, to prove that such bills or notes are counterfeit, any law or practice to the contrary notwithstanding.

Certificate of
Secretary or
Treasurer of
U. States, or
of any State
may, in cer-
tain cases, be
admitted as
proof.

SEC. 6. *Be it further enacted,* That in all criminal prosecutions, within this State, for forging and altering any paper or other bill of credit of the United States of America, or either of said States; or for uttering or passing, any such paper or other bill of credit, knowing the same to be forged or altered; or of holding and possessing such forged or altered bill of credit, with intent to utter or pass the same, knowing the same to be forged or altered, the certificate under oath of the Secretary or Treasurer of the said United States of America, or of either of the said States, of the tenor of the true bill, alleged to be forged or altered, shall be admitted on trial in such prosecution, for the purpose of proving such bill of credit to be forged or altered.

Punishment
for engraving
or making
plates, press,
&c. for forg-
ing;

SEC. 7. *Be it further enacted,* That if any person shall engrave, form, make or mend, or shall begin to engrave, form, make or mend any plate or plates, paper rolling press, or other tool, instrument or material, devised or adapted and designed for the stamping, forging and making any false and counterfeit certificates, bills, or notes which have been, or which shall be issued as aforesaid, by or for any debt of this State, or by or for any bank or banking company which is or shall be established in this State, or in any other part of the United States; or shall have in his possession any such plate or plates, engraven in any part, or any paper rolling press, or other tool, instrument or material, devised, adapted and designed as aforesaid, with the intent to use and employ the same, or to cause or permit the same to be used and employed in forging and making any such false and counterfeit certificates, bills or notes, every person so offending, who shall be thereof duly convicted before the Supreme Judicial Court, shall be punished by solitary imprisonment, for such term, not exceeding three months, and by confinement afterwards to hard labour for such term, not exceeding three years; or

or possessing
such plates,
&c. with in-
tent to use,
&c.

by fine not exceeding five hundred dollars and by imprisonment in the common gaol, for such term, not exceeding one year, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravations of the offence.

SEC. 8. *Be it further enacted,* That if any person shall forge or counterfeit, or shall procure to be forged or counterfeited, or shall willingly aid or assist in forging or counterfeiting any gold or silver coin, current within this State, by the laws or usages thereof, or if any person, knowing of such forging and counterfeiting, shall willingly aid or assist in passing and rendering current, as true, any such forged or counterfeit coin, and for that purpose shall, at any one time, possess any number, not less than ten, of similar pieces of false money or coin, forged and counterfeited to the similitude of the gold or silver money or coin, current as aforesaid, with intent to utter the same, as true, knowing the same to be false, forged and counterfeit, every person so offending, in either of the particulars, aforesaid, who shall be duly convicted thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term, not exceeding one year, and by confinement afterwards to hard labour for and during his or her life.

Punishment
for forging
gold or silver
coin—or
knowingly
aiding in pass-
ing it as true,
&c.
or possessing
such false piec-
es, with intent
to pass them
as true, &c.

SEC. 9. *Be it further enacted,* That if any person shall bring into this State, or shall possess within the same, any number of similar pieces of false money or coin, forged and counterfeited as aforesaid, knowing the same to be false, forged and counterfeit, with intent to utter and pass the same, as true; or if any person shall utter, pass or tender in payment, as true, any false money or coin, knowing the same to be false, being counterfeit, in the similitude of any gold or silver money, or coin current by law or usage, within this State, with intent to defraud any person or persons; every person, so offending, who shall be duly convicted thereof in the Supreme Judicial Court, shall be punished by solitary imprisonment for a term, not exceeding three months, and by confinement afterwards to hard labour for a term not exceeding three years; or by a fine not exceeding one thousand dollars, and by binding to the good behaviour for two years. And if after one conviction as aforesaid, the same per-

Punishment
for bringing
into State, or
possessing in
it, false coin,
&c. with in-
tent to pass,
&c.

Punishment
on a second
conviction,

or on being
convicted of
said offence,
in three several
instances,
at the same
term.

son shall be guilty a second time of the like offence, and shall be duly convicted thereof; or if any person before the Supreme Judicial Court, at the same term thereof, shall be charged and convicted of the said offence, in three several instances, then such person shall be adjudged to be a common utterer of counterfeit money, and shall be punished by solitary imprisonment for a term not exceeding one year, and by confinement to hard labour, for a term not less than two years and not exceeding ten years.

Punishment
for making,
mending or
possessing
any mould, or
engine for
coining metals
&c. or per-
mitting such
mould, &c. to
be used.

SEC. 10. *Be it further enacted,* That if any person shall cast, stamp, engrave, form, make or mend, or shall knowingly possess any mould, pattern, dye, puncheon, engine, press or other tool or instrument, devised, adapted or designed, for the coining and making any false and counterfeit money or coin, in the similitude of the gold and silver money or coin, current within this State, by the laws or usages thereof, with the intent to use and employ the same, or to cause or permit the same to be used and employed in coining and making any such false and counterfeit money and coin as aforesaid; every person so offending, shall be punished by solitary imprisonment for such term, not exceeding three months, and by confinement afterwards to hard labour for such term, not exceeding three years; or by a fine, not exceeding five hundred dollars, and by imprisonment in the common gaol for such term, not exceeding one year, as the Justices of the said Court, before whom the conviction may be, shall sentence and order, according to the aggravation of the offence.

Rewards to be
paid from
State treasury
to prosecutors,
on conviction
of certain of-
fences against
this Act.

SEC. 11. *Be it further enacted,* That for the prevention and discovery of certain of the offences aforesaid, there shall be allowed and paid at the public treasury, by the warrant of the Governor, with the advice and consent of the Council, to be granted upon the certificate of the Justice or Justices of the Supreme Judicial Court, before whom the conviction shall be, to the person or persons, who shall inform and prosecute against any other person or persons, who shall be thereupon charged and convicted, the following rewards, that is to say; for any conviction of the crime of forging and making any false and counterfeit certificate, bill or note, in the similitude of any certificate, bill or note, payable to the

bearer thereof, which hath been, or which shall be issued as aforesaid, for any debt of this State, or by or for any bank or banking company, within this State, by law established; or of the crime of forging and making any false and counterfeit coin, as aforesaid, for every person that shall be so convicted, the sum of sixty dollars: and for any conviction of the crime of possessing, with an intent to utter, or of knowingly uttering any such false and counterfeit certificate, bill, note, money or coin, the sum of forty dollars, for every person that shall be so convicted. And when it shall happen that two or more are the informers and prosecutors, in any one offence, the reward, thereupon to be allowed, shall be divided between them equally, or in such other proportions, as the Justice or Justices certifying as aforesaid, shall determine and appoint.

Case of more than one prosecutor in one offence—reward to be divided.

[Approved February 19, 1821.]

CHAPTER XII.

An Act against Perjury and Subornation of Perjury.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person, being lawfully required to depose the truth, in any proceeding in a course of justice, shall commit any manner of wilful perjury, every person so offending, and being thereof convicted before the Supreme Judicial Court, shall be punished by solitary imprisonment, for a term not exceeding three months, and by confinement afterwards to hard labour, for a term not less than two years, and not exceeding fifteen years.

Punishment of perjury.

SEC. 2. *Be it further enacted,* That if any person shall commit subornation of perjury, by procuring another person to commit wilful and corrupt perjury as aforesaid, every person guilty of such subornation of perjury, and being thereof duly convicted, shall be liable to, and suffer the same punishment and disability, as in this act is provided for the punishment of wilful perjury.

Of subornation of perjury.

SEC. 3. *Be it further enacted,* That if any person shall wilfully and corruptly endeavour to incite or to procure

Of a corrupt endeavour to

procure the
commission of
the crime of
perjury.

another person to commit wilful and corrupt perjury, as aforesaid, and the person, so incited, do not commit such perjury, the person so corruptly endeavouring to incite, and procure the committing of perjury, shall be punished by solitary imprisonment, for a term not exceeding two months, and by confinement afterwards to hard labour, for a term not exceeding five years.

Persons con-
victed of such
crimes not to
be received as
witnesses, un-
til reversed,
&c.

SEC. 4. *Be it further enacted*, That the oath of any person offending in any manner aforesaid, and thereof duly convicted as aforesaid, shall not be received, in any Court of record, until such time as the judgment given against such person shall be reversed.

[Approved February 27, 1821.]

CHAPTER XIII.

An Act for the Suppression and Punishment of Cheats.

Cheating by
false preten-
ces.

Punishable in
Supreme Jud.
Court.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That all persons, who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares, merchandize or other things, with intent to cheat, or defraud any person or persons of the same, shall, on conviction thereof, before the Justices of the Supreme Judicial Court, be sentenced to pay a fine to the use of the State, not less than forty dollars, and not exceeding four hundred dollars; or be sentenced to be confined to hard labour, for a term not exceeding seven years, at the discretion of the Court before whom such conviction shall be had.

Supreme Jud.
Court to have
exclusive juris-
diction of all
gross frauds at
common law.

SEC. 2. *Be it further enacted*, That the Supreme Judicial Court shall have exclusive jurisdiction of all gross frauds or cheats at common law; and any person who shall, before said Court, be convicted of any such fraud or cheat, shall be sentenced by the said Court to receive such punishment, as is provided in and by the first section of this Act.

[Approved February 14, 1821.]

CHAPTER XIV.

An Act respecting the wilful destruction and casting away of Ships and Cargoes ;
the custody of Shipwrecked Goods, and Trade and Navigation.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any owner of, Punishment for wilfully destroying a vessel, or causing it to be done. captain, master, officer or other mariner belonging to, any ship or vessel, shall, within the body of any County of this State, wilfully cast away, burn, sink, or otherwise destroy, the ship or vessel of which he is owner, or to which he belong, or in any wise direct or procure the same to be done, with intent or design to prejudice any person or persons, that hath underwritten, or shall underwrite any policy or policies of insurance thereon, or, of any merchant or merchants, that shall load goods thereon; or of any owner or owners of such ship or vessel; every person so offending, being thereof lawfully convicted, before the Supreme Judicial Court of this State, shall be deemed and adjudged a felon, and shall be sentenced to imprisonment for life, or for a term not less than five years, at the discretion of the Court: *Provided nevertheless,* That nothing herein contained shall be construed to bar or prevent the party injured from Party injured may also have his action for damages. having and maintaining his action for the damages, sustained thereby.

SEC. 2. *Be it further enacted,* That if any owner of any ship or vessel shall equip, or fit out such ship, or vessel, within this State, with intent that the same should be wilfully cast away, burnt, or otherwise destroyed, to the prejudice of any owner of any goods, laden on board said ship or vessel, or of any underwriter upon any policy, or policies of insurance upon such ship or vessel, or upon any goods laden thereon, and shall be thereof convicted before the Supreme Judicial Court of this State, such offender shall be sentenced to pay a fine not exceeding five thousand dollars, or be punished by solitary imprisonment for a term, not exceeding three months, and confinement to hard labour for a term, not exceeding five years. Punishment for fitting out a vessel, with intent to be wilfully cast away.

SEC. 3. *Be it further enacted,* That if any owner of any ship or vessel, or of any goods laden on board such ship Punishment for making out

false invoice,
 &c. of cargoes,
 to defraud un-
 derwriters.

or vessel, shall make out and exhibit, or cause to be made and exhibited any false or fraudulent bills of parcels, invoices, or estimates of any such goods, laden or pretended to be laden on board such ship or vessel, with intent to defraud any underwriter upon any policy or policies of insurance upon such ship or vessel, or upon any goods laden thereon; every person, so offending, and being thereof lawfully convicted, shall be sentenced to pay a fine not exceeding five thousand dollars, or be punished by solitary imprisonment, for a term not exceeding three months, and confinement to hard labour, for a term not exceeding five years.

Punishment
 for making
 any false affi-
 davit or pro-
 test.

SEC. 4. *Be it further enacted,* That if any captain, mate or mariner of any ship or vessel, shall make out and swear to any false affidavit, or protest; or if any owner of any such ship or vessel, or of any goods laden thereon, shall procure such false affidavit, or protest, or, knowing the same to be false, shall exhibit the same, with intent to deceive and defraud any underwriter upon any policy of insurance upon any such ship or vessel, or any goods laden thereon, every person convicted thereof before the Supreme Judicial Court aforesaid, shall be punished in the manner prescribed in the third section of this Act.

Governor to
 appoint Com-
 missioners of
 wrecks in the
 several coun-
 ties,

who are to be
 sworn.

And to give
 bond to Judge
 of Probate;

same remedy
 thereon, as on
 administration
 bond.

SEC. 5. *Be it further enacted,* That the Governor, with the advice of Council, be, and he is hereby authorized to appoint, in the several counties of this State, a sufficient number of COMMISSIONERS, removeable at the pleasure of the executive, OF WRECKS AND LOST GOODS, all of whom shall be commissioned and sworn to the faithful performance of their duty, and shall give bond to the Judge of Probate for the county in which they reside, with sufficient sureties to the acceptance of said Judge, for the faithful discharge of their trust. And the same remedy may be had, on said bonds, to any owner, agent, or other person interested in said property, as is had on bonds, given to Judges of Probate, for the faithful administration on estates.

Commission-
 ers to take
 charge of
 wrecked
 goods,

SEC. 6. *Be it further enacted,* That any Commissioner, appointed in pursuance of this Act, immediately on receiving information of any shipwreck, finding of any goods or shipwrecked property of any kind, to the amount of one hundred dollars, or upwards, on any of the shores, or waters,

within this State, shall immediately repair to said property, and in case the same is unattended by any owner, or agent, shall take charge of the same for the lawful owner; and in the best way and manner, in his power, preserve and secure the same; and said Commissioner shall have all the power and authority of a fireward to preserve and secure the same, and compel assistance for that purpose; and it shall be the duty of said Commissioner to take an inventory of the same, and when required by the owner, or agent of said property, or any insurance company, or underwriter, or other person interested in said property, shall make oath that the same is the whole property which has come to his custody, and shall immediately deliver the same to the lawful owner, agent, or other person legally authorized to receive it: *Provided*, he is paid or secured to be paid, such reasonable compensation for his services and expenses, and such custom house duties, as may be due from said property, or which may have been previously paid by said Commissioners; and said Commissioner and the owner, or agent, shall have power to agree on the proper compensation to be allowed for said services and expenses: but in case they shall not agree, said Commissioner shall receive such sum, as shall be awarded by referees, mutually chosen by the parties; said Commissioner to choose one referee, the owner, agent, or other person interested, another, and the two thus chosen, shall choose a third; and the referees thus appointed, and the parties thus appointing them, shall proceed in all respects as is required by "An Act for rendering the decision of civil causes as speedy and as little expensive as possible;" and if either party shall be dissatisfied with the award of the referees aforesaid, notice shall be given to the opposite party and an appeal shall lie to the Supreme Judicial Court, next to be holden in and for the county, in which such property shall be found; and the Supreme Judicial Court shall have power to hear and determine the case, in the same manner, as if the cause came before them on an appeal from the Circuit Court of Common Pleas; and no owner or agent, or other person interested in said property, shall be holden to pay any charge to any other person for services or expenses, in taking or securing said property, than

and take an inventory, and make oath thereto, when required by owner,

and deliver the same to owner, on payment for services, expenses and custom house duties.

Compensation to be settled by referees, if not agreed by the parties interested.

Appeal from decision of referees to S. Court.

Penalty for secreting shipwrecked property ;

or intermeddling with it after the arrival of a Commissioner.

Commissioners on their arrival at any wreck to publish an account of facts ;

penalty for neglect.

Commissioners may sell sufficient of the property at auction to pay duties,

the Commissioner aforesaid, unless it be that property taken and secured before the arrival of said commissioner ; in which case said Commissioner shall, upon due hearing of all parties interested determine the compensation to be received as aforesaid, and from his award in writing there shall be no appeal, unless the sum demanded and allowed by said Commissioner shall exceed the sum of fifty dollars ; in which case an appeal shall lie to the Supreme Judicial Court, to either party aggrieved by the doings of said Commissioner ; and similar process shall be had by said Court as is had in cases carried by appeal from the Circuit Court of Common Pleas : and in case any person or persons shall, after the arrival of the Commissioner aforesaid, intermeddle with, take, secrete, or detain any property shipwrecked or found as aforesaid, but as he or they are authorized and directed by the Commissioner, owner, or agent, or other person interested, he or they shall forfeit and pay the sum of one thousand dollars, for each and every offence, to be recovered by an action of debt in any Court proper to try the same ; and the Commissioner, owner, agent, or other person interested, or either of them, are hereby authorized to bring said action and receive said penalty to their own use.

SEC. 7. *Be it further enacted,* That it shall be the duty of the Commissioners aforesaid, immediately on their arrival at any wreck or goods found as aforesaid, to publish in the most expeditious manner, the facts they shall ascertain, that the knowledge of the event may come to the owner, agent, or person interested, as soon as may be ; and in all cases they shall publish the particulars of said shipwreck, or goods found, in the nearest newspaper to said shipwreck or goods found, on penalty of fifty dollars, to be recovered by an action of debt, in any Court, proper to try the same, at the suit of the owner, agent, or other person interested, who are hereby authorized to bring said action and receive the penalty recovered, to their own use ; and it shall and may be lawful for said Commissioners to dispose of so much of said property, at public auction, within thirty days from taking the same into custody, as shall be sufficient to pay all duties, due for the same, to the Custom House, and shall forthwith pay, or give security to the Custom House officer,

for the discharge of the same ; and in case the property so taken as aforesaid is perishable, and cannot be retained in possession for one year, without essentially lessening its value, and no owner, agent, or other person, interested in the same, shall appear to claim it, for the space of sixty days, it shall be the duty of said Commissioners to advertise said property in the public newspapers, and sell the same at auction to the best advantage, and if no owner, agent or other person, interested in said property, shall appear, in one year to claim said property, it shall be the duty of each of said Commissioners to present an inventory of said property, received by him as aforesaid, or if sold, an account of sales to the Treasurer of this State, and to make oath, that the same is the whole property which has come to his possession, duties paid to the Custom House excepted, if said duties are paid ; and shall pay over to the Treasurer aforesaid the whole balance remaining in his hands for the use of the State : and the Treasurer aforesaid is hereby authorized to make said Commissioner such reasonable compensation for his services and expenses, as shall be just and equitable, to be ascertained in case of disagreement by said Commissioners and Treasurer, in the same way and manner, as is provided for in this act, when said Commissioners and owners, or agents, shall not agree respecting such services and expenses : and when any Commissioner, appointed in pursuance of this Act, shall neglect to inform the Treasurer of this State, of property, taken by him as aforesaid, for sixty days, after the expiration of the year, he may have held the same ; or if so informing said Treasurer, he or they shall neglect to pay over the property aforesaid, to the Treasurer aforesaid, the Attorney General of this State is hereby authorized and directed to commence a proper legal process for the same, at the next term of the Supreme Judicial Court in the County where said Commissioner dwells, and shall pursue the same to final Judgment and execution, and pay the sums, recovered as aforesaid, to the Treasurer of said State : and whereas it is of the greatest consequence to this State, and to the United States, to promote the increase

and in certain cases may sell the whole property.

If no owner appear, within one year, the Commissioner to present an inventory, or account of sales, to State Treasurer on oath.

Commissioner to receive reasonable compensation from Treasurer.

Attorney General to prosecute Commissioner for delinquency.

of the number of ships and vessels, and to prevent any discouragement to merchants and others from being interested and concerned therein : and whereas it has been held that owners of ships or vessels, are answerable for goods, wares, and merchandize, shipped on board the same, although the said goods, wares, and merchandize should be embezzled, lost or destroyed, by the masters or mariners of said ships and vessels, without the knowledge or privity of the owner or owners ; by means whereof merchants and others may be discouraged from adventuring their fortunes, as owners of ships or vessels, which will necessarily tend to the prejudice of the trade and navigation of this State : Therefore,

Extent to which owners of vessels are liable for embezzlement by master or mariners.

SEC. 8. *Be it further enacted*, That no person or persons who is; are, or shall be owner or owners, in part or in whole, of any ship or vessel shall be subject, or liable to answer for, or make good to any one or more person, or persons, any loss or damage, by reason of any embezzlement, secreting or making way with, by the master or mariners, or any of them, of any goods, wares, or merchandize, or any property whatsoever, which shall be shipped, taken in, or put on board any ship or vessel, or for any act, matter, or thing, damage, or forfeiture done, occasioned, or incurred by the said master or mariners, or any of them, without the privity or knowledge of such owner or owners, further than the value of the interest which such owner, or owners have, or had, at the time of such shipment in the ship or vessel, with all her appurtenances, and the full amount of his interest in the freight due, or to grow due, for and during the voyage wherein such embezzlement, secreting, or making way with, as aforesaid, or other malversation of the master or mariners, shall be made, committed, or done, any law, usage or custom to the contrary notwithstanding.

Where vessel, cargo and freight are insufficient to make compensation, in case of several freighters, or proprietors, what proceedings are to be had.

SEC. 9. *Be it further enacted*, That if several freighters or proprietors of any such goods, wares, or merchandize, or any property whatever, shall suffer loss or damage, by any of the means aforesaid, in the same voyage, and the value of the ship or vessel and all her appurtenances, and the amount of the freight due, or to grow due, during such voyage, shall not be sufficient to make compensation to all and every of them, then such freighter, or proprietor shall receive satis-

faction thereout in average, in proportion to their respective losses and damages: and in every such case, it shall, and may be lawful to and for such freighters, or proprietors, or any of them, in behalf of himself and all other such freighters and proprietors, or to, or for the owners of such ship or vessel, in behalf of himself and all the other part owners of such ship, or vessel, to exhibit a bill in the Supreme Judicial Court for a discovery of the total amount of such losses and damages, and also of the value of such ship or vessel appurtenances and freight, and for an equal distribution and payment thereof, amongst such freighters and proprietors in proportion to their losses and damages, according to the rules of equity: and the said Supreme Judicial Court is hereby vested with full power and authority to entertain, hear, determine, and decree, in such cases, in the same manner as Courts of equity would have authority to do.

Bill for discovery may be filed in Sup. Jud. Court.

SEC. 10. *Be it further enacted,* That the charterer of any vessel (in case he shall navigate such vessel at his own expense) shall be considered the owner; within the meaning of this act; and, in case any loss or damage shall happen to any person or persons, by any of the causes or circumstances, mentioned in the eighth Section of this Act, and such loss or damage shall be compensated from the freight, or the proceeds of the sale of such vessel, or both, in manner as herein before provided; then the owner or owners of such vessel or vessels shall have a right to recover the value of such vessel or vessels, of the person, or persons, to whom such vessel or vessels shall have been chartered, as aforesaid.

Charterer to be considered as owner within the meaning of this Act, in case.

[Approved Feb. 27, 1821.]

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CHAPTER XV.

An Act to protect the Sepulchres of the Dead.

SEC. 1. *BE it enacted by the Senate and House 'of Representatives in Legislature assembled,* That if any person, not being authorized by the Board of health, or the Selectmen of any town in this State, shall knowingly and wilfully dig up, remove or carry away, or aid or assist in digging up, remov-

Punishment for digging up or removing dead bodies;

ing or carrying away any human body, or the remains thereof, such person or persons, so offending, shall, on conviction of such offence, in the Supreme Judicial Court of this State, be imprisoned not more than one year, or fined, not more than one thousand dollars, according to the nature and aggravation of the offence.

for concealing
any such body.

Proviso.

SEC. 2. *Be it further enacted*, That if any person or persons knowingly and wilfully receive, conceal, or dispose of any human body, or the remains thereof, which shall have been dug up, removed, or carried away in the manner described in the first Section of this Act, he or they shall be subject to the same forfeitures and penalties, as in said Section is provided, on conviction thereof in the Court aforesaid: *Provided however*, That nothing in this Act shall be so construed as to affect the power or authority in the Courts of the United States, or of this State, or of any person acting under the authority of the same, in removing or disposing of the bodies of persons executed pursuant to any sentence of such Court.

Fines, how to
be appropriated.

SEC. 3. *Be it further enacted*, That all fines, accruing under this Act, shall enure, one half to the informer, and one half to the town in which the offence is committed.

[Approved February 14, 1821.]

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CHAPTER XVI.

An Act to prevent the arrest of Dead Bodies.

Punishment
for taking dead
bodies on
mesne process
or execution.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That if any Sheriff, Coroner or Constable, shall take the body of any deceased person, by virtue of any writ, on mesne process or execution, upon conviction of such offence, before the Supreme Judicial Court, or the Circuit Court of Common Pleas, within the County, in which such offence shall have been committed, he shall be fined not more than five hundred dollars, or imprisoned for a time not exceeding six months.

[Approved March 10, 1821.]

CHAPTER XVII.

An Act to prevent Routs, Riots, and Tumultuous Assemblies, and to suppress Insurrections.

SEC. 1. *BE* it enacted by the Senate and House of Representatives, in Legislature assembled; That if any number of persons of twelve or more shall be unlawfully, riotously, or tumultuously assembled, and shall not immediately disperse themselves, after having been by any Sheriff, Deputy Sheriff or Justice of the Peace of any County, or any Constable of any Town, commanded so to do, in the name of this State, each and every person of such assembly shall be punished by solitary imprisonment, not exceeding one year, and afterwards be confined to hard labour for a term, not exceeding one year, or fined in a sum, not exceeding five hundred dollars, to the use of this State; any or all of the above punishments, according to the aggravation of the offence.

Routs, riots and unlawful assemblies.

to disperse when commanded by a Justice, or Sheriff, &c.

Punishment for disobedience.

SEC. 2. *Be* it further enacted, That if any person or persons shall disguise himself or themselves, with intention to obstruct the execution of the laws of this State, or to intimidate or interrupt any Sheriff, Deputy Sheriff, Surveyor or other person, in the legal discharge of any office or appointment, under the laws of this State, every such person so disguised shall, on conviction, be fined in a sum, not exceeding five hundred dollars, or be imprisoned, not exceeding one year, or both, according to the aggravation of the offence.

Punishment for being disguised with intent to obstruct the execution of the laws—intimidate officers & others.

SEC. 3. *Be* it further enacted, That whenever an insurrection shall have taken place, in this State, to obstruct the course of Justice, or the due execution of the laws, the Governor of this State is hereby empowered to detach, and call into actual service, such part of the Militia of the State, as in his opinion, shall be adequate to suppress the same.

In case of Insurrection Governor may call out the militia.

[Approved March 5, 1821.]

CHAPTER XVIII.

An Act to prevent Gaming for Money or other Property.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all notes, bills, bonds, judgments, mortgages, or other securities or conveyances, given, granted, drawn, entered into, or executed by any person or persons whatsoever, where the whole, or any part of the consideration of such conveyances or securities, shall be for any money, or other valuable thing, won by gaming or playing at cards, dice or any other game or games, or by betting on the side or hands of any person gaming, or for the reimbursing or repaying any money, knowingly lent or advanced for any gaming or betting, or lent and advanced, at the time and place of such play, to any person or persons, so gaming or betting, or that shall, during such play, so play or bet, shall be void and of no effect; and that where such mortgages, securities or other conveyances, shall be of lands, tenements or hereditaments, or shall be such as incumber or affect the same, such mortgages, securities or other conveyance shall enure, and be to the sole use and benefit of such person or persons, as should or might have, or be entitled to such lands, tenements, or hereditaments in case the said grantor or grantors thereof, or the person or persons so incumbering the same, had been naturally dead; and that all grants or conveyances to be made for the preventing of such lands, tenements or hereditaments from coming to, or devolving upon such person or persons, hereby intended to enjoy the same, as aforesaid, shall be deemed fraudulent, void, and of no effect.

All securities given for money won by gaming declared void.

Conveyances of real estate given as above shall enure to the same uses as if the grantor were dead.

Persons losing money, &c. by gaming may sue and recover the same of the persons winning.

SEC. 2. *Be it further enacted*, That any person or persons, who shall at any time, or sitting, by playing at cards, dice, or any other game or games, or by betting on the sides or hands of such as do game, lose to any one or more person or persons, so playing or betting, any sum or sums of money, or any other valuable thing, and shall pay or deliver the same, or any part thereof, the person or persons, so losing and paying, or delivering the same, shall be at liberty to sue for and recover the money or goods, so lost and paid

or delivered, or any part thereof, or damages to the full value of the same, from the respective winner or winners thereof, with costs of suit, by action to be commenced within three months next after the losing, paying or delivering the same, in which it shall be sufficient for the plaintiff to allege, in an action of *assumpsit*, that the defendant had received, to the plaintiff's use, the money so lost and paid; and in an action of trover for the goods so lost and delivered, that they came to the hands of the defendant, without mentioning in the declaration the particular manner and occasion of the goods or monies being lost; and in case the person or persons, who shall lose such money or other thing as aforesaid, shall not, within the time aforesaid, really and truly without cover or collusion, sue, and with effect prosecute, for the money or other thing, so by him or them lost and paid or delivered, as aforesaid, it shall and may be lawful to and for any person or persons to sue for and recover treble the value of the money, goods or chattels, with full costs of suit, by action of debt upon this statute, against such winner or winners as aforesaid, one moiety thereof to the use of the person or persons, that will sue for the same, and the other moiety to the use of the poor of the town where the offence shall be committed.

In case the person losing shall not, within 3 months, sue for the same, any other person may recover treble the value.

SEC. 3. *Be it further enacted*, That any person who shall be convicted, on an indictment of the Grand Jury, before the Circuit Court of Common Pleas, or the Supreme Judicial Court, of winning, at any one time or sitting, of any person or persons, by gaming or betting as aforesaid, in money, goods or chattels to the value of three dollars or upwards, and of receiving the same or security therefor, shall forfeit double the amount or value of the money, goods or chattels, so won and received, to the poor of the town, where the offence is committed.

Persons convicted of winning at one sitting three dollars or more and receiving the same, or security for it, shall forfeit double the amount.

SEC. 4. *Be it further enacted*, That in suits brought by the person losing money, goods or chattels against the person winning the same, when it shall appear from the declaration, that the goods, said to be lost, came to the hands of the defendant by gaming; or the money he had received was by gaming, then and in such case, if the plaintiff shall offer to make oath, and if required by the Court, where the trial

Suits brought against persons winning how to be conducted.

Proviso.

is, shall actually swear to the losing the money, goods or chattels, by gaming with the defendant, at the time and place alleged, judgment shall be rendered for the plaintiff to recover damage, to the amount of the goods or money the defendant has received of the plaintiff, by gaming, with costs of suit, unless the defendant will swear that he did not receive of the plaintiff the money, goods or chattels for which he is sued, or any part of them by gaming; and when the defendant discharges himself on oath as aforesaid, he shall recover of the plaintiff his reasonable costs: *Provided nevertheless*, That nothing in this Act shall be so construed, as to prevent the supporting and proving any declarations, on the aforesaid actions, in the same manner as other declarations are proved, but it shall be considered as optional with the plaintiff either to proceed in proving his declaration, in the way specially provided in this Act, or in the same way other declarations are proved; any thing herein to the contrary notwithstanding.

Penalty for playing at cards, dice or billiards at any house of entertainment.

SEC. 5. *Be it further enacted*, That if any person shall play at cards, dice or billiards, or with any other implements used in gaming, in any tavern or house of entertainment, or place licensed for retailing spirituous liquors, or in any of the out houses, yards, gardens, or appendages of the same, or shall in any of the houses, or licensed places aforesaid, expose to view any of the implements aforesaid, or shall be seen sitting at any table therein, with any of the said implements before him, and shall be convicted thereof before any Justice of the Peace, or any Circuit Court of Common Pleas, on the presentment of a Grand Jury, the person so offending shall forfeit and pay a sum, not less than one, nor more than ten dollars, to the use of the poor of the town where the offence shall be committed.

[Approved January 27, 1821.]

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CHAPTER XIX.

An Act for the restraining the taking of excessive Usury.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That no person or per-

sons upon any contract hereafter made, shall take, directly or indirectly, for loan of any monies, wares, merchandise or any other commodities above the value of six dollars, for the forbearance of one hundred dollars for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter time; and that all bonds, contracts, mortgages and assurances made for the payment of any money lent, or covenanted to be lent, upon or for usury, whereupon or whereby there shall be reserved or taken above the rate of six dollars in the hundred as aforesaid, shall be utterly void; and that any person or persons, who shall upon any contract, take, accept and receive, by way and means of any corrupt bargain, loan or exchange, or by covin or deceitful conveyance, or by any other ways or means, for the forbearing or giving day of payment for one whole year, of and for their money, or other thing or things above the sum of six dollars for the forbearing of one hundred dollars for a year; so after that rate for a greater or lesser sum, or for a longer or shorter time, shall forfeit and lose for every such offence the full value of the goods and monies, or thing or things so lent, exchanged, bargained, sold, or agreed for, to be recovered by indictment or action of the case, one moiety thereof to the use of this State, and the other moiety to him or them, who prosecutes for the same, any law to the contrary notwithstanding.

No person shall take more than at the rate of six per cent. interest.

Usurious bonds, mortgages, &c. to be void.

Penalty and mode of recovery.

SEC. 2. *Be it further enacted,* That when any person or persons shall be sued on any bond, contract, mortgage or assurance for the payment of any monies, wares, merchandise or other commodities, whereby or wherein any sum is given, secured or taken for the forbearing or giving day of payment for a longer or shorter time, then, if the creditor be alive, and the debtor or debtors shall come into Court, where the said cause is to be tried, and shall offer to make oath, and if required by the Court, shall actually swear to the same, that there is taken, reserved or secured by such bond, contract or assurance, above the rate of six dollars in the hundred, for the forbearance of the property actually lent or sold, whether it be in money or other things, for one year, and so after that rate for a greater or lesser sum, or for a longer or shorter time, or that the creditor or creditors have received more than at the rate of six dollars in the hun-

In suits on a usurious security, Defendant may prove the usury by his oath.

unless creditor will swear the security is not usurious.

This act not to extend to certain contracts.

dred, for the loan or forbearance of the monies or other things actually lent or sold; such bond, contract, mortgage or assurance shall be utterly void; and the debtor fully and absolutely discharged from the payment of any monies, goods or other things lent, exchanged, bargained, sold or agreed for as aforesaid, *unless* the creditor or creditors will swear that he, she or they have not, directly nor indirectly, wittingly taken or received more than after the rate of six dollars in the hundred, for forbearance or giving day of payment; and by such bond, contract, mortgage or assurance, there is not reserved, secured or taken more than after the rate of six per centum, for forbearance or giving day of payment, for the goods, monies, or other things actually lent or sold, any law, usage or custom to the contrary notwithstanding: *Provided*, nothing in this Act shall extend to letting of cattle, or other usages of the like nature in practice amongst farmers, or maritime contracts among merchants, as bottomry, insurance, or course of exchange, as hath heretofore been practised.

[Approved March 20, 1821.]

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CHAPTER XX.

An Act to prohibit certain Officers of Courts from buying Promissory Notes and other demands, for the purpose of making a gain or profit in the collection thereof.

No Attorney, Justice, Sheriff, Coroner or Constable to loan or advance money, &c. to obtain demands for suit or collection, with intent thereby to make profit, &c.

Be it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person shall, with an intent thereby to procure himself to be retained as an Attorney, or employed as a Justice of the Peace, Sheriff, Deputy Sheriff, Coroner or Constable, in the collection of any note, account or other demand whatever, by a suit at law, or with an intent thereby to procure and obtain any promissory note, account, or other demand for the purpose of making to himself any gain or profit from the writs or fees, arising in the collection thereof, by a suit at law, directly or indirectly loan or advance any sum or sums of money; or shall promise to loan or advance any sum or sums of money; or shall forbear and give day of payment; or shall promise to forbear and give day of payment of any sum of money due on

any demand left with such person to be by him collected; or shall pay or assume to pay any debt of any person whatever; or shall purchase any goods or chattels, or shall give or promise any valuable consideration whatever, with an intent thereby to procure and obtain any promissory note, account or other demand, for the purpose of making to himself any gain or profit, from the writs or fees arising in the collecting thereof, by a suit at law; every person so offending shall forfeit and pay a sum, not more than five hundred, nor less than twenty dollars, for each and every offence, to be recovered by indictment in the Supreme Judicial Court; in which case the forfeiture shall enure to the State; or by action before any Court, proper to try the same; in which case the forfeiture shall accrue, one moiety to him or them, who shall first sue and prosecute for the same, and the other moiety to the use of the County where such action may be prosecuted.

Punishment:

Appropriation of penalty.

[Approved February 19, 1821.]

CHAPTER XXI.

An Act to prevent Bribery and Corruption.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person shall directly or indirectly, give or engage to pay, any sum of money, or other valuable consideration to another, in order to induce such other person to procure for him, by his interest, influence or any other means whatsoever, any office or place of trust, within this State, and be thereof convict, shall forfeit a sum not exceeding three hundred dollars, nor less than fifty dollars, at the discretion of the Court which shall have cognizance of the same; and be rendered forever after incapable of sustaining any office or place of trust, within this State.

Penalty for giving a bribe:

SEC. 2. *Be it further enacted*, That if any person shall receive of another, any sum of money or other valuable consideration, as a reward for procuring or to procure any office or place of trust within this State, for any other per-

Penalty for receiving a bribe.

son, and be thereof convicted, shall forfeit a sum not exceeding three hundred dollars, nor less than fifty dollars, at the discretion of the Court which shall have cognisance of the same ; and if such offender be in any such office, he shall on the conviction, be disabled from holding the same, and be forever after incapable of sustaining any office or place of trust within this State ; and for the more easy conviction of such offenders :

Either offending party informing and prosecuting the other, shall be freed from the penalty.

Appropriation of penalties.

SEC. 3. *Be it further enacted*, That if either the parties offending as aforesaid, shall give information upon oath, against the other offending party, and shall duly prosecute said information ; such informer shall be freed from every of the penalties aforesaid. And all offences against this Act shall be heard, tried and determined before the Supreme Judicial Court ; and all pecuniary penalties accruing thereby, shall be one third thereof to the informer, and the other two thirds to the State.

[Approved March 15, 1821.]

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CHAPTER XXII.

An Act for the protection of the Personal Liberty of the Citizens, and for other purposes.

Punishment for transporting any inhabitant from one part of this State to another, except, &c.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That if any person shall transport or carry, or cause to be transported or carried, any subject of this State, or other person lawfully residing and inhabiting therein, to any part or place without the limits of the same, by land or water, without his consent or voluntary agreement ; or in order to remove such person from one part of the State to another part of the same, except for the purpose of defending the same in time of war, agreeable to the Constitution, or except such person be sent by due course of law, to answer for some criminal offence committed in some other of the United States of America ; every person so offending, and every person aiding and abetting the same, being duly convicted thereof before the Supreme Judicial Court, shall be punished by fine not exceeding two thousand dollars, and imprisonment not exceeding two

years, or by solitary imprisonment for a term not exceeding three months, and confinement to hard labour for a term not exceeding five years ; or any one or more of those punishments, at the discretion of the said Court, and be further liable to the action of the party grieved.

SEC. 2. *Be it further enacted,* That every master or commander of any outward bound ship or vessel, that shall hereafter carry or transport out of this State any person under the age of twenty-one years, or any apprentice, or any indented servant, to any parts beyond sea, without the consent of his parents, master, or guardian, shall forfeit and pay the sum of two hundred dollars ; one moiety to the use of this State, and the other moiety to him or them that shall sue for the same ; and be further liable for the damages sustained by the parent, master or guardian, in a special action of the case.

No master of vessel may transport minors, &c. out of State, without consent of parents, &c.

SEC. 3. *Be it further enacted,* That if any person within this State shall hereafter enlist or cause to be enlisted, into the army of the United States, any minor under the age of twenty-one years, knowing him to be such minor, without the consent in writing of his parent, guardian and master, and such minor shall within six months after his enlistment be removed out of this State, so that he cannot be had before the Judicial Tribunals of this State, by virtue of a writ of *habeas corpus*, the person so enlisting such minor, or so causing him to be enlisted, on conviction thereof, before the Supreme Judicial Court, shall forfeit and pay a fine not exceeding five hundred dollars, or be imprisoned for a term not exceeding one year.

Punishment for enlisting minors without consent of parents, &c. in writing, into U. S. army, knowing them to be minors and sending them out of the State.

SEC. 4. *Be it further enacted,* That if any person, knowing any one to be a minor under the age of twenty-one years, shall persuade him to depart from this State, with intent to enlist into the army of the United States, without the consent of his parent, guardian and master, on the conviction thereof, before the Supreme Judicial Court, shall forfeit and pay a fine not exceeding five hundred dollars, or be imprisoned for a term not exceeding one year.

Punishment for persuading a minor, knowing him to be such, to depart from State with intent so to enlist him.

SEC. 5. *Be it further enacted,* That all fines and forfeitures, incurred by virtue of the third and fourth sections of this Act, shall be recovered by indictment, or information, in

Fines, &c. how recovered and may be appropriated.

Persons concerned may have the benefit of habeas corpus act.

the Supreme Judicial Court, to the use of the State; *Provided*, That the said Court, in which any such fine or forfeiture shall be recovered, may award to the parent, guardian or master of such minor, such part of such fine or forfeiture, so recovered, not exceeding the one moiety thereof, as they in their discretion, shall think proper; *Provided also*, That all persons concerned shall be entitled to all the privileges and subject to all the penalties and requisitions, given and incurred in an Act, entitled "An Act directing the process in habeas corpus," where the same do not contravene the provisions of this Act.

Punishment for knowingly bringing into the State by sea, any persons convicted of infamous crimes, or of infamous character, &c.

SEC. 6. *Be it further enacted*, That if any master or other person, having charge of any vessel, shall therein bring into, and land, or suffer to be landed in any place within this State any person, before that time convicted in any other State, or in any foreign country, of any infamous crime, or any for which he hath been sentenced to transportation, knowing of such conviction, or having reason to suspect it, or any person of a notoriously dissolute, infamous, and abandoned life and character, knowing him or her to be such, shall, for every such offence, forfeit the sum of four hundred dollars, one half thereof to the use of the State, and the other half to the use of any person, being a citizen of, and residing in this State, who shall prosecute and sue for the same by action of debt as aforesaid.

Appropriation of penalty.

[Approved February 24, 1821.]

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CHAPTER XXIII.

An Act against selling unwholesome Provisions.

Punishment for selling unwholesome provisions.

Conviction in S. J. Court, or C. O. C. Pleas.

Be it enacted by the Senate and House of Representatives in Legislature assembled, That if any person shall sell any diseased, corrupted, contagious or unwholesome provisions, whether for meat or drink, knowing the same, without making it known to the buyer, and being thereof convicted before the Circuit Court of Common Pleas, in the County where such offence shall be committed, or the Justices of the Supreme Judicial Court, he shall be punished by

fine, imprisonment, or by solitary imprisonment for a term not exceeding three months, and confinement to hard labour for a term, not exceeding five years, and binding to the good behaviour, or one or more of these punishments, to be inflicted according to the degree and aggravation of the offence, if such conviction be had in the Supreme Judicial Court; and if such conviction be had before the Circuit Court of Common Pleas, shall be punished by fine not exceeding one hundred dollars, and binding to good behaviour.

[Approved February 20, 1820.]

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CHAPTER XXIV.

An Act for the Prevention and Removal of Nuisances.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That the Selectmen of every town in this State, where the Selectmen thereof, together with any two Justices of the Peace in the same County, shall judge such regulation to be necessary, shall from time to time, as occasion shall be, assign some certain places for the exercising of any of the trades or employments of killing creatures for meat, distilling of spirits, trying of tallow or oil, currying of leather, and making earthen ware, and forbid and restrain the exercise of either of them in other places not so approved and allowed; and all assignments of such houses or places by Selectmen, with the assent of two or more Justices, for the exercise of any of the occupations aforesaid, shall be entered in the town book where such Selectmen respectively belong; and also made known by having notifications thereof posted up in some public places in the same town.

Selectmen, with two Justices may assign places for slaughter houses, distilleries, &c.

Such assignments to be entered on town book and notice thereof posted.

SEC. 2. *Be it further enacted,* That if any distiller, tallow chandler, manufacturer of oil, currier, butcher or potter, shall make use of any house or place, other than such as are or may be assigned and permitted, in consequence of this act, for the exercise of the employments aforesaid, or any of them, the person so offending shall forfeit and pay a fine of twenty dollars, one half thereof for the use of this State, and the other half part for the use of him or them that shall prosecute and sue therefor, by action of debt,

Penalty for carrying on any such business except in places so assigned.

Mode of recovery and appropriation of the penalty.

Form of the
warrant.

in which such nuisance may be, at a meeting of such Selectmen, to be holden forthwith for that purpose, upon the requisition of such Sheriff, and they shall be empowered to inquire into the nuisance complained of, which warrant shall be in the form following, viz: [Form of warrant.]

(SEAL.) H—ss. To the Sheriff of the County of _____,
Greeting.

Whereas complaint is made to us, the subscribers, two of the Justices of the Peace, within and for the County of _____, *quorum unus*, by _____ of _____ in the same county, that _____ of _____ upon the _____ day of _____, at _____, with force and arms, did unlawfully erect or cause to exist, a nuisance of the following description, viz: [here particularly describe the nuisances] and the same nuisance unlawfully and unjustly, and with like force and arms, doth still keep up and continue. You are, therefore, in behalf of the State, commanded to cause to come before us, upon the _____ day of _____, at _____, in the same county, twelve good and lawful men of your County, each of whom having freehold of the yearly value of ten dollars, to be empannelled and sworn to inquire into the nuisance afore described. Given under our hands and seals, this _____ day of _____ in the year of our Lord _____.

R. S. } Justices of the Peace,
N. O. } *quorum unus*.

Person com-
plained of to
be notified.

And the said Justices shall make out their summons to the party complained against, in the form following:

[Form of the Summons.]

State of Maine.

Form of Sum-
mons.

H—ss. To the Sheriff of the County of _____, or
either of his Deputies, Greeting.

We command you, that you summon _____, to appear before the subscribers, two of our Justices of the Peace, within and for our said County of _____, *quorum unus*, at a place called _____, in D_____, in the said County, at _____ o'clock in the _____-noon; then and there to answer to the complaint of _____ to them exhibited; wherein it is stated that [here recite the complaint;] and you are to make a return of this writ, with your doings therein, unto our said Justices, upon or before the said _____

day of _____. Witness our said Justices, the _____
day of _____ in the year of our Lord _____.

R. S.

N. O.

Which Summons shall be served upon the party complained against, by reading the same in his hearing, or by a copy thereof, left at his usual place of abode, fourteen days exclusively, before the day of trial; and if the party shall not appear to defend, the Justices shall proceed to the inquiry in the same manner as if he were present; and when the Jury shall appear, the Justices shall lay before them the exhibited complaint, and shall administer the following oath, viz: [Foreman's oath.] You, as Foreman of this Jury, do solemnly swear, that you will well and truly try whether the complaint of _____, now laid before you, be true, according to your evidence. So help you God. The other Jurors' oath. The same oath which your Foreman hath taken, on his part, you and each of you shall well and truly observe and keep. So help you God. And if the Jury shall find the complaint to be true, then they shall return their verdict in the form following: [Form of the Verdict.] At a Court of inquiry, held before R. S. and N. O. Esquires, two of the Justices of the Peace within and for the said County of _____, *quorum unus*, at D_____ in the said county of _____ upon the _____ day of _____ in the year of our Lord _____, the Jury upon their oaths do find, that _____ is a nuisance, and that the same, on or before the _____ day _____ at _____ with force and arms, unjustly and unlawfully was erected, or caused to exist, by _____ of _____; and that the said _____, with like force and arms, unjustly and unlawfully, still continues and keeps up the same nuisance. Wherefore the Jury find, upon their oaths aforesaid, that the said nuisance ought to be abated and removed without delay. And if by accident or challenge, there shall happen not to be a full Jury, the Sheriff shall fill the panel, *de talibus circumstantibus* as in other causes. And if the Jury, after a full hearing of the cause, shall find the complaint laid before them supported by evidence, they shall all sign their verdict, in form aforesaid; otherwise the defendant shall be allowed his legal costs, and

Mode of service.

Justices Proceedings.

Foreman's Oath.

The other Jurors' Oath.

Form of the Verdict.

have his execution therefor, under the hands and seals of said Justices.

Sec. 8. *Be it further enacted*, That if the Jury shall return their verdict, signed by the whole panel, that the complaint is supported, the Justices shall enter up judgment for the complainant to have the nuisance abated and removed, and shall award their writ accordingly in form following:

[Form of the Writ of Removal.]

Form of Writ
of removal.

State of Maine.

H—ss. To the Sheriff of our County of ———, or to either of his Deputies, Greeting:

Whereas, at a Court of Inquiry for abatement and removal of a nuisance, held at D—— in our County of ——— upon the ——— day of ——— in the year of our Lord ———, before ———, Esqrs. two Justices of the Peace for our said County of ———, *quorum unus*, the Jurors empannelled and sworn by our said Justices, did return their verdict in writing, signed by each of them, that the ——— aforesaid, [described as follows, as in the verdict] is a nuisance; and that the same, on or before the ——— day of ———, at ———, with force and arms, and unjustly and unlawfully was erected and caused to exist, by ——— of ———; and that the said ———, with like force and arms, unjustly and unlawfully still continues and keeps up the same nuisance; Whereupon it was considered by our said Justices, that the said nuisance be abated and removed: We therefore command you, that, taking with you the force of the County, if necessary, you cause the said nuisance forthwith to be abated and removed; and also that you levy of the goods, chattels or lands of the ——— the sum of ———, being costs taxed against him in the trial aforesaid, together with ———, being the sum estimated by the said Justices as necessary costs, which will arise in the abatement and removal of said nuisance, together with thirty three cents more for this writ, and also your own lawful fees. And for want of such goods, chattels or lands of the said ———, by you to be found, you are to take the body of the said ———, and him commit to our gaol in L. in our said County of H. ———, there to remain until he shall pay the sums afore-

said, together with all fees on the service of this writ, or until he is delivered by order of law; and make return of this writ, with your doings thereon, within thirty days next coming. Witness our said Justices at D. aforesaid, the _____ day of _____ in the year of our Lord _____

R. S.

N. O.

Provided nevertheless, That the party complained against, as aforesaid, may, in person or by attorney, appear before the said Justices, and may there give in evidence, on the trial aforesaid, under the general issue, any special matter or thing of which he could avail himself under any special plea in the regular Courts of law: *Provided also,* That when judgment shall be entered up against him upon the verdict of the Jury aforesaid, he may there appeal from the judgment of the said Justices, to the next Supreme Judicial Court, to be holden in the same County; which appeal, when so entered, shall stop all further proceedings of the said two Justices, and no writ on said judgment for abatement and removal shall issue, except as herein after directed: And it shall be the duty of the person appealing, as aforesaid, from the judgment of the said Justices, to procure attested copies of all the papers in said complaint, under the hands of the said Justices, and to enter his appeal at the next Supreme Judicial Court; and if he shall fail so doing, the judgment of the said two Justices shall be in full force against him; and they are hereby authorized and empowered, in such case, to issue their writ for abatement and removal, in the same manner, as if no appeal had been entered.

Respondent may give special matter in evidence under general issue;

and appeal to Sup. J. Court.

Proceedings before the Justices stayed by entry of appeal.

Appellant to produce copies and enter his appeal,

or the judgment of the Justices shall be in full force, and they may abate the nuisance.

SEC. 9. *Be it further enacted,* That the said Supreme Judicial Court, be, and they hereby are authorized to take cognizance of said complaint and judgment, and to try by the Jurors returned to serve in their said Court, on the Jury of trials, the truth of the facts alleged in said complaint, under the issue aforesaid, and if the said Jury shall find by their verdict, the facts alleged in said complaint to be true, the said Court are further authorized to cause and order the said nuisance to be abated and removed, and to award against the party complained of, such sums as may be necessary

Proceedings on the appeal in Sup. Jud. Court.

to defray the expense of removing said nuisance. But if the Jury aforesaid shall find, that the facts alleged in said complaint are not supported, the party complained of shall recover against the complainant his legal costs, and execution shall issue accordingly.

Same costs to be allowed as in Courts of law.

SEC. 10. *Be it further enacted,* That the same costs shall be allowed by the said two Justices and the Supreme Judicial Court, to parties and witnesses, as are allowed in the regular Courts of law; and that the said two Justices, *quorum unus*, shall have the same fees, and be allowed the same sums for the trial aforesaid, as are allowed to Justices in the process of forcible entry and detainer.

[Approved March 8, 1821.]

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CHAPTER XXV.

An Act for the prevention of damage by Fire, and the safe keeping of Gun Powder.

Selectmen to make regulations as to the keeping of gun powder in certain towns.

SEC. 1. *Be it enacted by the Senate and House of Representatives; in Legislature assembled,* That the Selectmen of each town within this State, containing not less than fifteen hundred inhabitants, be, and they hereby, are authorized and empowered to make rules and regulations, from time to time, in conformity with which, all gun powder which is or may be within such town, shall be kept, had or possessed therein; and no person or persons shall have, keep or possess within such town, any gun powder, in any quantity, manner, form or mode, other than may be prescribed by the rules and regulations aforesaid.

Penalty for violating such regulations.

SEC. 2. *Be it further enacted,* That any person or persons who shall keep, have or possess any gun powder, within any town, contrary to the rules and regulations which shall be established by the Selectmen of such town, according to the provisions of this Act, shall forfeit and pay a fine of not less than twenty dollars, and not exceeding one hundred dollars, for each and every offence, to be recovered by action of debt in any Court proper to try the same.

Mode of recovery.

Powder kept contrary to regulations may

SEC. 3. *Be it further enacted,* That all gun powder which shall be had, kept or possessed, within any town, contrary to the rules and regulations which shall be established by the

Selectmen of such town, according to the provisions of this Act, may be seized by any one or more of the Selectmen of such town, and shall within twenty days next after the seizure thereof, be libelled, by filing with any Justice of the Peace in such town, a libel, stating the time, place and cause of seizure, and the time and place when and where trial shall be had before said Justice, and a copy of said libel shall be served by the Sheriff, or his deputy, on the person or persons, in whose possession the said gun powder shall have been seized, by delivering a copy thereof to each such person, on leaving such copy at his or her usual place of abode, seven days at least, before the time which shall be specified in said libel, for the trial thereof, that such person may appear, and show cause why the gun powder, so seized or taken, should not be adjudged forfeit; and if any person shall appear to show cause why the same should not be adjudged forfeit, such appearance shall be entered of record, by said Justice; and if the gun powder, seized as aforesaid, shall be adjudged forfeit, the person or persons, whose appearance shall have been recorded as aforesaid, shall pay all costs of prosecution, and execution shall issue therefor: *Provided however*, That the person or persons, whose appearance shall have been recorded, may appeal from the judgment rendered by said Justice of the Peace, to the next Court of Common Pleas to be holden for the county where such town is situated: and the party so appealing, before such appeal shall be allowed, shall recognise, with sufficient surety or sureties to the libellant, to prosecute his said appeal and to pay all such costs as may arise after said appeal; and no further proceedings shall be had upon the judgment appealed from; and in case the party appealing shall neglect to enter his appeal, the Court appealed to, may, upon complaint, proceed to affirm the judgment of the Justice, with additional costs.

be seized, and libelled.

Proceedings on such libel.

Appeal from Justice's judgment,

after proceedings.

SEC. 4. *Be it further enacted*, That any person, who shall suffer injury by the explosion of any gun powder, had or possessed, or being within any town, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, may have an action of the case in any Court proper to try the same, against the

Persons damaged by explosion of powder illegally kept, may obtain redress.

owner or owners of such gun powder, or against any other person or persons, who may have had the possession or custody of such gun powder, at the time of the explosion thereof, to recover reasonable damages for the injury sustained.

Selectmen
may enter
buildings to
search for
powder, &c.

SEC. 5. *Be it further enacted*, That it shall, and may be lawful for any one or more of the Selectmen of any town to enter any building, or other place, in such town, to search for gun powder, which they may have reason to suppose to be concealed or kept, contrary to the rules and regulations which shall be established in such town, according to the provisions of this Act, first having obtained a search warrant therefor according to law.

Penalty for
suffering
stoves, chim-
nies or stove
pipes to be de-
fective, &c.

SEC. 6. *Be it further enacted*, That when any stove, chimney or stove pipe, within any town containing not less than fifteen hundred inhabitants, shall be defective, or out of repair, or so constructed or placed, that any building, or other property shall be in danger of fire therefrom, the Selectmen of said town shall give notice, in writing, to the possessor or possessors of such stove, chimney or stove pipes, to remove or repair the same; and if such possessor shall for the term of six days after the giving of such notice, unnecessarily neglect to remove, or effectually repair such stove, chimney or stove pipes, such possessor shall, for each and every such neglect, forfeit and pay a fine of not less than ten dollars, nor more than fifty dollars, to be recovered by action of the case, in any Court proper to try the same.

Action of case.

Appropriation
of fines, &c.

SEC. 7. *Be it further enacted*, That the fines, forfeitures and penalties, which shall arise under this Act, shall accrue, one moiety thereof to the use of the town within which the offence shall be committed, and the other moiety to the use of the person who shall prosecute or sue for the same.

Above regula-
tions not to be
in force till
published by
Selectmen, &c.

SEC. 8. *Be it further enacted*, That the rules and regulations, which shall be established in any town, according to the provisions of this Act, shall be of no force or effect, until such rules and regulations, together with this Act, shall have been published by the Selectmen of such town, three weeks successively, by printing in some newspaper printed within the County, or by posting up attested copies in three several public places in said town.

[Approved March 19, 1821.]

CHAPTER XXVI.

An Act to prevent damage from firing Crackers, Squibs, Serpents and Rockets, within this State.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person shall offer for sale, set fire to, or throw any lighted cracker, squib, rocket or serpent within this State, without the license of the Selectmen of the several towns, respectively, first obtained therefor, he shall forfeit, for every such offence, the sum of five dollars; one moiety to the use of the poor of that town, in which the offence shall be committed, and the other moiety to the use of the prosecutor; to be recovered by action of debt or by information before any Justice of the Peace of the county, in which the offence shall be committed, with the costs of suit.

Crackers, squibs, &c. not to be fired without license.

Punishment.

[Approved Feb. 20, 1821.]



CHAPTER XXVII.

An Act more effectually to secure Fire Engines from being injured.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person shall wantonly or maliciously, spoil, break, injure, damage or render useless, any engine, or any of the apparatus thereto belonging, prepared by any town, society, person or persons, for the extinguishment of fire, and shall be convicted thereof, before the Supreme Judicial Court, he shall be punished by a fine not exceeding five hundred dollars, or by imprisonment, not exceeding two years, at the discretion of the Court; and be further ordered to recognise, with sufficient surety, or sureties, for his good behaviour for such term as the Court shall order.

Persons wantonly injuring fire engines,

punished on conviction in S. J. Court.

[Approved March 2, 1821.]

CHAPTER XXVIII.

An Act for the prevention of Lotteries not authorized by law, and to prohibit the sale or purchase of Tickets in this State.

No person to make a lottery, &c. &c. unless granted by Congress or the Legislature of this State.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That no person or persons shall within this State, make any lottery, or aid or assist in making any lottery, or advertise and make public any scheme for a lottery within this State, unless such lottery shall be granted under the authority of this State, or of the Congress of the United States.

No person may dispose of tickets in any lottery not so granted,

SEC. 2. *Be it further enacted,* That no person or persons shall within this State, sell, give or otherwise dispose of any ticket or tickets, or part of any ticket, in any lottery not authorized by the laws of this State or of the United States.

nor purchase any ticket in a lottery, not so authorized.

SEC. 3. *Be it further enacted,* That no person or persons shall within this State, purchase or receive any ticket or tickets, or part of any ticket, in any lottery not authorized by the laws of this State, or of the United States.

No person shall have in his possession, with intent to sell, any tickets in a lottery not so authorized.

SEC. 4. *Be it further enacted,* That it shall not be lawful for any person within this State to have in possession any ticket or paper purporting to be the number of any ticket or part of any ticket, of any lottery not granted or authorized by this State, or the United States, with intent to sell, negotiate or dispose of the same, or in any way or manner to advertise or make public, or aid or assist in advertising or making public, any scheme or class of any lottery not granted or permitted to be drawn by this State or the United States.

Penalty for the violation of this Act ;

how recovered.

SEC. 5. *Be it further enacted,* That any person or persons who shall offend in any of the particulars aforesaid, shall forfeit and pay for each and every offence, a sum not less than fifty dollars, nor more than one thousand dollars, to be recovered by action to and for the use of any person who shall sue for the same, in any Court of competent jurisdiction.

Limitation.

SEC. 6. *Be it further enacted,* That this act shall take effect and be in force, from and after the first day of May next.

[Approved March 15, 1821.]

CHAPTER XXIX.

An Act for preventing abuses in distilling of Strong Liquors, with Leaden Heads or Pipes.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That if any person shall presume to distil or draw off any spirits or strong liquors through leaden heads, worms or pipes, upon legal conviction thereof, before any Court of competent jurisdiction, shall forfeit and pay a sum of three hundred dollars.

Penalty for distilling through leaden heads, pipes and worms.

SEC. 2. *Be it further enacted,* That no brazier, pewterer, or other artificer whatsoever, shall presume to make any worm or head (for distilling) of coarse and base pewter, or such as hath any mixture of lead in it, under the penalty of three hundred dollars.

Worms, or heads not to be made of base metal.

SEC. 3. *Be it further enacted,* That in each town within this State, where the distilling trade is carried on, it may be lawful for the inhabitants thereof, at their annual town meeting for choice of town officers, to choose two or more Assay Masters, whose business it shall be to inspect and make trial of any such heads and worms, as shall be suspected by them ; and if, upon their assaying and trial of them, they be found to be made of lead, or of other base metal, or to have an alloy of lead or other base metal in them, they shall give notice thereof to the distiller or owner thereof, who is hereby forbidden to make any further use thereof in distilling, under the aforesaid penalty of three hundred dollars.

Towns may choose Assay Masters to inspect and try heads and worms.

SEC. 4. *Be it further enacted,* That the Assay Masters or Inspectors are hereby empowered to enter into any Still-house or place, where such utensils are suspected to be kept, and to cut off so much of them as shall be needful to make an assay or trial of them. And every distiller shall be obliged to produce a certificate, under the hands of the Assay Masters, for the time being, for all the pewter heads and worms which they shall make use of in distilling, that they have been tried and are approved of by them for good pewter, and that they have put their mark and number upon them ; for which mark a stamp shall be forthwith prepared at the town charge : For which certificate and every assay

Assay Masters may enter still-houses, &c. to examine.

Certificate to be produced of Assay Masters.

Fees for certificate and assay.

Certificate to be entered with Town Clerk.

Penalties, how recovered and appropriated.

Assay master's oath.

made by them, they shall be allowed by the distiller or owner of such heads and worms, the sum of *one dollar*. The said certificate, with mark and number to be entered in the Town Clerk's book, for which service the Town Clerk shall be allowed ten cents.

SEC. 5. *Be it further enacted*, That all forfeitures and penalties arising by virtue of this Act, shall be the one half to the poor of the town, where the offence is committed, and the other half to him or them, that shall inform and sue for the same. And further, that all Assay Masters, chosen to that office, shall make oath as follows, viz. I, A. B. do solemnly swear that I will, to the best of my skill, prove and make trial of all worms and still heads, within the town of C. that are used, or designed to be made use of, in distilling, that shall come to my knowledge, for which there is no certificate in the Town Clerk's book, and will make a true and faithful report thereof to the Town Clerk, for the time being. So help me God.

[Approved March 15, 1821.]

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CHAPTER XXX.

An Act relating to the punishment of Convicts.

Sentence of imprisonment to be executed in county gaol.

Gaoler directed.

Treatment of convicts in solitary.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That, whenever any person convicted of any crime or offence whatever, shall be duly sentenced therefor to solitary imprisonment and confinement to hard labour by any Court of this State or of the United States, the Court before whom such conviction shall be had, may order the sentence to be executed in the common gaol or house of correction of the County in which the offence shall have been committed. And the keeper of such gaol or house of correction is hereby authorized and required to execute such sentence of solitary imprisonment, by confining the convict in one of the cells of the gaols or house of correction, if any such there be, and if there be none, then in the most retired and solitary part of the prison or house of correction; and during the time of such solitary confinement, the convict shall be fed on bread and water only, un-

less other food shall be necessary for the preservation of his or her life ; and no intercourse shall be allowed with such convict, except for the conveyance of food or other necessary purposes.

itary confinement.

SEC. 2. *Be it further enacted,* That the keeper of the gaol or house of correction, to which such convict shall be committed, after the term of solitary imprisonment, shall furnish the convict with tools and materials to work with, in any suitable manner in which his or her time can be usefully and profitably employed, either in the gaol or house of correction, or within the close yard thereof in the day time ; and such convict, when set to work in the yard, shall be confined with a log and chain, or in such other manner, as shall prevent his or her escape, without unnecessarily producing bodily pain, or interrupting his or her labour. And it shall be the duty of the Sheriff in each county to oversee the execution of all such sentences, and to make such rules and regulations, from time to time, as may best effect the purposes of this Act, and to cause the same to be duly executed ; and all such rules and regulations shall be reported to the Court of Sessions of the county within which the gaol or house of correction is situated, and they may be altered or repealed by said Court, as they shall see fit. And it shall be the duty of the keeper of such gaol or house of correction, to report to the said Court at every session thereof within his county, the names and condition of all such convicts in the gaol or house of correction, and the manner in which they are treated and employed. And if any convict during the time for which he or she is sentenced to hard labour, shall refuse or neglect, without any reasonable excuse therefor to labour as aforesaid, when tools and materials for that purpose are furnished, such convict so long as he or she shall so refuse, shall be kept on bread and water, and be confined to solitary imprisonment in the manner provided in the first section of this Act.

Gaoler to furnish tools, &c.

Convicts to wear log and chain in certain cases.

Duty of Sheriff.

Rules of gaol to be submitted to court of sessions.

Gaoler to report.

Refractory convicts to be punished.

SEC. 3. *Be it further enacted,* That the keeper of every gaol or house of correction, to which any such convicts shall be committed, shall cause to be kept a true account of the labour of every such convict, and of the articles manufactured or produced by each, and all other proceeds of his or

Gaoler to keep an account of the proceeds of labour,

And report the sums to the court of sessions.

If proceeds of labour exceed the cost of materials and expenses.

Balance to be paid the convict,

or to his family.

Charge of convicts to be paid by the State.

Courts may order funds to be advanced for materials.

her labour; and also of the cost of the materials furnished to each convict, and of all other charges and expenses attending the execution of this Act; and he shall also cause the articles manufactured by each convict or other produce of his or her labour to be sold, and like account of the proceeds of such sales to be kept; all which accounts, from time to time, shall be reported and presented to said Court in the county, in which the gaol or house of correction is situated. And at the expiration of the term for which any such convict shall have been sentenced, if it shall appear that the proceeds of his or her labour have been more than sufficient to pay for the cost of the materials, with which he or she may have been furnished, and for his or her maintenance in the gaol or house of correction, and for all other charges and expenses incurred in keeping such convict confined and employed in manner aforesaid, the residue of such proceeds shall be paid over to such convict for his or her own use: *Provided*, That said Court if it see fit, at any time during the confinement of such convict, when it shall appear that the proceeds of his or her labour are more than sufficient for the purposes aforesaid, may order the residue of said proceeds or any part thereof to be paid over to the use of the family of such convict, if any he or she have; and in such case the balance only of such proceeds, if any remain at the time of the discharge of such convict, shall be paid to him or her in manner aforesaid. And all charges and expenses incurred in maintaining such convicts, and keeping them employed, excepting such as may be reimbursed by the proceeds of their labour, shall be paid by the State. And the accounts of the gaoler or keeper of the house of correction in that behalf being first settled by the Court aforesaid in the counties respectively, in which the gaol or house of correction is situated, the said Courts respectively are hereby authorized to order such sums, as may, from time to time, be necessary to enable the gaoler or keeper of the house of correction to provide such tools and materials as aforesaid to be advanced and paid to him out of the Treasury of the county in which the gaol or house of correction may be situated, such gaoler or keeper of the

house of correction to be accountable in manner abovementioned for the expenditure of the same, and to repay the amount thereof into the said county treasury out of the proceeds of the labour of such convicts, or out of the monies received by him in that behalf from the treasury of the State.

SEC. 4. *Be it further enacted,* That if any such convict shall be unruly or shall disobey any of the regulations established as aforesaid, for the government of the convicts in the gaol or house of correction, to which he or she is committed, it shall be lawful for the Sheriff of the county in which the gaol or house of correction may be, after due inquiry into the circumstances of the case, to order such unruly or disorderly convict to be kept in solitary imprisonment and to be fed on bread and water only, in the manner provided in the first section of this Act, for a term not exceeding ten days, for every such offence. And it shall be the duty of the gaoler or keeper of the house of correction to furnish every such convict, who may be capable and willing to read, with a copy of the Bible and with such moral and religious tracts, as may be suited to their condition, when he can procure the same from any Bible Society or from other well disposed persons; and also to permit any Minister of the Gospel, who may be disposed to aid in the reformation of such convicts and to instruct them in their moral and religious duties, to have access to them when in solitary imprisonment, and at all other times, when not employed in labour according to the provisions of this Act.

Refractory convicts may be punished.

Convicts may be furnished with the bible, &c.

And ministers may have access to them.

SEC. 5.* *Be it further enacted,* That when any gaol or house of correction shall, hereafter, be erected in any county, suitable apartments shall be made therein for the purpose of solitary imprisonment, and yards shall be laid out adjoining thereto of sufficient dimensions for the employment of all such convicts, and enclosed with a fence sufficiently high and strong to prevent escapes and all access to or intercourse with such convicts by any persons from without the prison. And it shall be the duty of the Court of Sessions in every county in which there is now a gaol or house of correction, suitable for the confinement of such convicts

* 5th section repealed Mar. 19, 1821.

Gaols hereafter to have cells and work yards.

Penalty for neglect.

forthwith to order such yards to be laid out and enclosed as aforesaid, adjoining to such gaol or house of correction. And any county which shall for the space of two years after such order neglect to make such yard or fence according to the provisions of this Act, shall forfeit and pay to the use of the State the sum of five hundred dollars to be recovered on information or indictment before the Supreme Judicial Court when sitting within or for any adjoining county.

* 6th section repealed Mar. 19, 1821.

When there is no suitable gaol in a county,

sentence may be executed in a neighbouring county.

SEC. 6.* *Be it further enacted*, That whenever it shall appear to the Court, at the time of passing such sentence as aforesaid, that there is no gaol or house of correction in the county where the offence may have been committed, suitable for the confinement of such convict according to the provisions of this Act, such Court may order the sentence to be executed in any neighbouring county in which there may be a gaol or house of correction, suited to that purpose, and every such convict shall be confined and kept at work in the gaol or house of correction, to which he shall be so committed in like manner in all respects as if the sentence had been passed in the county in which the gaol or house of correction is situated.

Repeal of former act.

SEC. 7. *Be it further enacted*, That an Act relating to the punishment of convicts, who may be sentenced to solitary imprisonment and confinement to hard labour, adopted by the Constitution of this State be and the same is hereby repealed.

[Approved June 27, 1820.]

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CHAPTER XXXI.

An Act repealing part of an Act relating to the punishment of Convicts.

Repeals two sections of former act.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That the fifth and sixth sections of an Act entitled, "An Act relating to the punishment of convicts," passed on the twenty-seventh day of June last, be, and the same are, hereby repealed.

SEC. 2. *Be it further enacted*, That until more suitable and permanent provision respecting prisons can be made,

in case of any conviction, on which the convict shall be punished by solitary imprisonment and confinement to hard labour, the Court before whom such conviction may be had, shall order such punishment to be by solitary imprisonment so far as the situation of the prison, the state of the convict, and the circumstances and aggravation of the offence shall render proper.

Regulations
respecting sol-
itary imprison-
ment.

[Approved March 19, 1821.]

CHAPTER XXXII.

An Act respecting Conditional Pardons.

WHEREAS in the course of human events it sometimes happens that crimes for which the perpetrators are legally sentenced to suffer the punishment of death, are attended with alleviating circumstances:

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That whenever any person, who has been, or shall hereafter be sentenced by the Justices of the Supreme Judicial Court, to suffer the punishment of death, shall make application to the Governor for pardon, and the Governor shall think proper, by and with the advice and consent of the Council, to grant such pardon, on condition that the person thus sentenced be imprisoned or confined to hard labour during his or her natural life, or for a certain term of years, in the condition of such pardon to be expressed, the Governor be, and hereby is authorized in order to carry the same into effect, to issue his warrant or warrants, directed to all proper officers; and the said officers shall be holden to serve, execute and obey the same, in the same manner as if such imprisonment or confinement had been the punishment awarded in the original sentence.

Governor with
advice of
Council may
grant condi-
tional pardons.

[Approved February 28, 1821.]

CHAPTER XXXIII.

An Act to prevent and punish Trespasses.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That if any person shall cut down, destroy or carry away any tree or trees what-

Description of
trespasses—

ever, placed or growing for use, shade or ornament; or any timber, wood or underwood, standing, lying or growing on land not his own; not having the consent of the owner thereof; or shall throw down or open any bars or gates, fence or fences, and leave the same down or open; or shall injure, mar or deface any fence or fences, belonging to, or enclosing lands not his own; or shall dig up or carry away any stones, ore, gravel, clay, sand, turf or mould, roots, fruit, or plants; or cut down or carry away any sedge, grass, hay or corn, wherein he hath no interest, standing, lying or being on any land not his own; or shall take or carry away from any wharf or landing place, whereof he is not a proprietor or owner, any goods whatever, wherein he hath no interest, without the leave of some person who has interest therein; or shall break the glass, or any part of it, in any building not his own; the person so offending, shall forfeit and pay for each tree or stick of timber so cut down, destroyed or carried away; and for each and every other offence, a fine not less than one dollar, nor more than seven dollars, to the use of the State, to be recovered on complaint before any Justice of the Peace in the county where the offence shall be committed, and shall be liable to answer in damages to the party injured: *Provided*, That nothing in this Act shall be construed, to prohibit the surveyors of highways from taking stones and gravel from uninclosed lands for the repairing of the highways.

Penalty for committing—

liable also in damages to party injured.

Proviso as to surveyors of highways.

Penalty for destroying mile stones or monuments.

SEC. 2. *Be it further enacted*, That if any person shall wilfully break, deface or destroy any mile stone or public monument, unless properly authorized so to do, the person so offending shall forfeit and pay for each offence, a fine not less than seven dollars, nor more than fifty dollars to the use aforesaid, to be recovered on indictment before the Circuit Court of Common Pleas in the county where the offence shall be committed, and be further liable to answer in damages as aforesaid.

Penalty for committing any of the above offences secretly, by night, or in disguise.

SEC. 3. *Be it further enacted*, That any person who shall commit any of the offences abovementioned, secretly, in the night time, or in disguise, shall forfeit and pay a fine to the use of the State, not less than ten dollars, nor more than sixty dollars for each offence, to be recovered on indictment.

SEC. 4. *Be it further enacted,* That when any trespasses shall be committed on any buildings or enclosures belonging to any county, town or parish, the county, town and parish Treasurer, for the time being, shall be and hereby are severally authorized to sue for the damage done to the public building or enclosures of their county town or parish respectively; and where any public buildings are owned partly by the town and partly by the county, in that case the county or town Treasurer, whoever may first institute an action, may prosecute for damages thus sustained. And where any public building is owned by any school district the town Treasurer may sue therefor in manner aforesaid.

Counties, towns and parishes may sue for damage done to their buildings or property.

SEC. 5. *Be it further enacted,* That if any person shall enter upon any grass land, orchard or garden without permission from the owner thereof, with intent to cut, destroy, take or carry away, any grass, hay, fruit or vegetables, with intent to injure or defraud such owner, each person so offending shall forfeit and pay, for every such offence a sum not less than two dollars, nor more than ten dollars to the use of the State, to be recovered on complaint before any Justice of the Peace of the County in which the offence shall be committed; and the persons so offending shall also be liable in damages to the party injured.

Penalty for entering on another's grass land, orchard, &c. without leave with intent to destroy fruits, grass, &c.

how recovered.

SEC. 6. *Be it further enacted,* That if any person having entered upon any grass land, orchard or garden, shall take therefrom, without permission of the owner thereof, and with the intent to injure and defraud such owner, any grass, hay, fruit, vegetable or shrub, cultivated thereon for ornament or use, such person so offending shall forfeit and pay for each offence, to the use of the State, a sum not less than five, nor more than fifty dollars, to be recovered by indictment or information before the Circuit Court of Common Pleas, in the county where such offence shall be committed, and the person so offending, shall be also liable to the party injured, in a sum equal to three times the value of such grass, hay, fruit, vegetable or shrub, to be recovered by action of the case in any Court of competent jurisdiction.

Penalty for a person carrying away from any orchard or grass land, without leave of owner, any grass, fruit, &c.

liable also in damages.

SEC. 7. *Be it further enacted,* That any person, who having entered upon any grass land, field or orchard, shall, without permission of the owner thereof, and with the intent

Penalty for cutting or mutilating fruit, or ornamental, or shade trees.

to injure him, break, bruise, cut, mutilate, injure or destroy, any fruit tree, tree for ornament or shade, or shrub cultivated thereon, for ornament or use, and which shall be standing or growing thereon, such person so offending, shall forfeit and pay to the use of the State, a sum not less than ten dollars, nor more than one hundred dollars, to be recovered by indictment or information, in manner as is provided in the second section of this Act.

how recovered.

**Penalty for
committing
such wrongs
on Lord's day
or by night.**

Limitation of prosecutions.

SEC. 8. *Be it further enacted,* That if any person shall commit any of the trespasses mentioned in this Act, on the Lord's day or in the night time, that is to say, between sun-setting and sunrising, he shall be liable to double the penalties and forfeitures, the same to be prosecuted for, and recovered in manner as before provided ; and all prosecutions for breaches of this Act, shall be commenced within one year from the time the offence shall be committed, or the penalties or forfeitures shall have accrued, and not afterwards.

[Approved March 19, 1821.]

CHAPTER XXXIV.

An Act to prevent the waste and destruction of Timber and Cord Wood.

Persons seized of *freshhold estate or remainder or reversion in fee simple or fee tail* may apply to Supreme Judicial Court for leave to cut timber and cord wood.

**Notice to be
ordered.**

**Court may ap-
point persons
to examine &
report.**

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled, That any person seized of a freehold estate, or of a remainder or reversion in fee simple, or feetail, in a lot or tract of wood land or timber land in this State, whereon the trees shall have come to an age and growth fit to be cut, may prefer a petition to the Supreme Judicial Court, holden in any county, representing the state and condition of such trees, and praying that the same may be felled and sold, and the proceeds thereof invested for the use of the persons interested in such wood land; and the said Court may thereupon order due notice to be given to all persons known to be interested therein, to appear and show cause, if any they have, why the prayer of such petition should not be granted; and after hearing the parties, if any shall appear, may appoint one or more persons to examine said wood land, or timber land, and if*

from their report, or other evidence which shall be exhibited to the Court, it shall appear that the trees upon said land are of an age and growth fit to be cut, and likely to deteriorate in value, the said Court may, and they are hereby empowered to license and order, on such terms and conditions as said Court shall require, the whole, or such part of such trees, as they shall think proper, to be felled and sold, and the money arising from the sale thereof to be brought into Court subject to their further order.

And may, if thought proper, grant leave on such terms as they may direct.

SEC. 2. *Be it further enacted,* That the said Court shall and may appoint one or more commissioners, whose duty it shall be to superintend and direct, the felling of said trees, and the sale of the same, and to account to said Court for the proceeds thereof, and also to give bond to the Clerk of said Court, or such other person as the Justices of said Court shall appoint, for the faithful performance of the trust. And the said Court may, and they are hereby further empowered, to cause the net proceeds of said trees after paying all necessary expenses and charges, to be invested in other real estate in this State, or in public stocks, at their discretion, to be holden to the same uses and subject to the same limitations as such wood land or timber land; and the income and profits thereof, to be paid to the person or persons entitled to the income and profits of said wood land or timber land, or to be paid and apportioned to and among the several persons interested in the same estate, in such portions as to the said Court shall appear just and equitable; and also to appoint one or more Trustees to take and hold such estate or stock for the uses aforesaid; and such Trustees to remove and others appoint in their stead, when and so often as the security and good management of the property shall require it: which Trustees shall also give bond, with good and sufficient sureties, to said Clerk or other person, as aforesaid, for the faithful execution and performance of the said trust.

Court to appoint Commissioners to superintend the cutting and selling the trees and account for proceeds to the Court.

Proceeds may be invested in other lands, stocks, &c.

Income to be paid among persons interested.

Court may appoint trustees to take and hold stocks, &c.

Trustees to give bond.

[Approved February 28, 1821.]

CHAPTER XXXV.

An Act to prevent Tenants in common, Joint Tenants and Coparceners, from committing waste, and for other purposes.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That all gifts, grants, feoffments, devises and other conveyances of any lands, tenements and hereditaments, which have been or shall be made to two or more persons, whether for years, for life, in tail or in fee, shall be taken deemed and adjudged to be estates in common and not in joint tenancy, unless it has been or shall be therein said that the grantees, feoffees or devisees, shall have or hold the same lands, tenements or hereditaments jointly, or as joint tenants, or in joint tenancy, or to them and the survivor or survivors of them, or unless other words be therein used, clearly and manifestly showing it to be the intention of the parties to such gifts, grants, feoffments, devises, or other conveyances, that such lands, tenements and hereditaments should vest, and be held as joint estates and not as estates in common: *Provided nevertheless,* Where any estate has already vested in the survivor or survivors, upon the principle of joint tenancy, it shall be held in like manner as it would have been held, if this Act had never been passed; any thing therein to the contrary notwithstanding.

SEC. 2. *Be it further enacted,* That if any person holding any lands in common and undivided, shall cut down, destroy or carry away any trees, timber, wood or underwood whatsoever, standing or lying on such lands, or shall dig up or carry off any stone or ore, or any other valuable matter or make any other strip or waste thereon, without first giving notice in writing under his or their hands, unto all the persons interested therein, or to their agents, factors or attornies, forty days beforehand, setting forth that he or they have occasion for, and shall enter upon and improve such lot or lots of lands lying in common as aforesaid, he shall forfeit and pay treble damages, to be recovered by any one or more of the persons interested in the same lands, who may prosecute and sue for the same, in an action of trespass in his or their own names, as well on the behalf of the

Grants, devises, &c. of lands to two or more to be estates in common and not joint tenancy,

unless clearly expressed or designed to be otherwise.

Proviso, as to estates already vested.

No tenant in common to cut or carry away timber, &c. from the land without giving notice in writing to all the co-tenants 40 days previous.

Penalty for so doing, and how to be recovered and appropriated.

other co-tenants, except the defendant, without being held to name them in the writ, as of him or themselves, one moiety of the aforesaid penalties to be for the use of such person or persons who shall sue for the same, and the other to and for the use of all the co-tenants excepting the defendant, in proportion to their respective interest, in the land where the trespass hath been committed.

SEC. 3. *Be it further enacted,* That when any writ of partition shall be brought and served at the suit of any one or more persons so interested in any lot or lots of land, tenements, or hereditaments, or a petition shall be pending in Court for a partition of the same, no person or persons having a right or interest in any such lands, tenements or hereditaments, or holding any part or share of the same in common as aforesaid, while such suit or petition is depending, shall or may cut down, destroy or carry away any trees, timber, wood or underwood, stone or ore, or other valuable matter whatsoever, standing, growing or lying on, or belonging to such lands, or shall otherwise hurt or damage any such lands, tenements or hereditaments, until partition can be made of the same according to law; on pain that the person or persons so offending shall incur the like forfeitures, to be recovered in like manner and for such uses as are before mentioned and declared.

While writ or petition for partition is pending, no person interested in common in the lands, &c. shall cut or destroy timber, &c. &c.

Penalty for so doing.

SEC. 4. *Be it further enacted,* That if any person or persons shall commence and prosecute any action of ejectment, or other real action, for recovering possession of any lands and real estate, unjustly withheld from him or them by any person, and such person in possession or any other persons pending such action, and after the service of the writ therein, shall make strip or waste by cutting, felling or destroying the wood, timber, trees or poles standing or growing on such land sued for; he or they making such strip or waste, shall for every such offence, forfeit and pay to the party aggrieved, treble damages, to be recovered by action in any Court proper to try the same, after the plaintiff or defendant has recovered his title and possession of such estate sued for.

Penalty for defendants making strip or waste while a real action is pending against him;

how recovered.

[Approved March 15, 1821.]

CHAPTER XXXVI.

An Act directing the mode of transferring Real Estates by Deed.

All deeds, &c.
to be signed,
sealed, ac-
knowledged
by the grantor
and recorded.

No convey-
ance, &c.
or lease for
more than sev-
en years shall
be good
against any
but grantor &
his heirs, un-
less so ac-
knowledged &
recorded.

Mode of prov-
ing deed when
grantor is dead
or out of State,
&c.

Mode of prov-
ing when wit-
nesses are also
dead.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That all deeds or other conveyances of any lands, tenements or hereditaments, lying within this State, signed and sealed by the party granting the same, having good and lawful right or authority thereunto, and acknowledged by such grantor or grantors, before a Justice of the Peace in this State, or before a Justice of the Peace or magistrate in some other of the United States of America, (or in any other State or Kingdom wherein the grantor or vendor may reside at the time of making and executing the deed,) and recorded at length in the registry of deeds in the county where such lands, tenements, or hereditaments lie, shall be valid to pass the same without any other act or ceremony in the law whatsoever. And no bargain, sale, mortgage or other conveyance in fee simple, fee tail, or for term of life, or any lease for more than seven years from the making thereof, of any lands, tenements, or hereditaments, within this State, shall be good and effectual in law to hold such lands, tenements or hereditaments, against any other person or persons, but the grantor or grantors, and their heirs only, unless the deed or deeds thereof be acknowledged and recorded in manner aforesaid: *Provided nevertheless*, That when any grantor or lessor as aforesaid shall go beyond sea, or be removed out of this government, or be dead, before the deed or conveyance by him executed, shall be acknowledged as aforesaid, in every such case the proof of such deed or conveyance, made by the oath of one or more of the witnesses, whose names may be thereunto subscribed, before any Court of record within this State; or in case one or all of such witnesses have also deceased, that the proof of the signature of such grantor or grantors, and of such subscribing witness or witnesses, made by the oath of two witnesses before any Court of record, within this State, shall be equivalent to the party's own acknowledgment thereof before a Justice of the Peace, as aforesaid.

Sec. 2. *Be it further enacted,* That if any grantor or lessor of any lands, tenements or hereditaments, shall refuse to acknowledge any deed or other conveyance as aforesaid, it shall be lawful for such grantee or lessee to leave a copy of such deed or lease, compared with the original by the Register, in the Register's office, and such copy so left shall be deemed sufficient caution to all persons against purchasing or extending execution thereon for the space of forty days from the time of leaving such copy. And any Justice of the Peace in the same county, after such refusal, at the request of the grantee or lessee, his heirs, executors, administrators or assigns, may issue a summons for such grantor or lessor to appear (if he see cause) at a certain time and place therein mentioned, to hear the testimony of the subscribing witnesses thereunto; which summons shall be served by the proper officer, seven days at the least before the time therein assigned for proving the deed; and at such time and place, whether the grantor or lessor be present or not, it being made to appear by the oath of one or more of the witnesses thereunto subscribed, that they saw the said grantor (or lessor) voluntarily sign and seal the deed, and that they subscribed their names as witnesses thereunto at the same time, such proceedings, and a certificate thereof, under the hand of the Justice, annexed to the deed (wherein the presence or absence of the adverse party shall be noted,) shall be equivalent to the acknowledgment of the grantor before a Justice of the Peace: *Provided,* That nothing in this Act shall be construed to bar any widow of any vendor or mortgagor of lands, or tenements, from her dower or right in, or to such lands or tenements, who did not join with her husband in such sale or mortgage, or otherwise lawfully bar, or exclude herself from such dower or right.

When grantor refuses to acknowledge a deed, what proceedings are to be had and the effect thereof.

Proviso as to widows' dower.

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Sec. 3. *Be it further enacted,* That no title or estate, in fee simple, fee tail, for term of life, or any lease for more than seven years from the making thereof, of any lands, tenements, or hereditaments within this State, shall be defeated or incumbered by any bond or other deed, or instrument of defeasance, in the hands or possession of any person, but the original party to such bond, deed, or other instrument, or his heirs, unless such bond, deed, or other instrument of

No estate in fee, &c. to be defeated by any bond of defeasance as to any but original party thereto, unless such defeasance is recorded.

Tenant in tail
may convey in
fee by deed
signed before
two witnesses,
acknowledged
and recorded ;

legal effect of
such convey-
ance.

Effect of such
conveyance
by tenant of
the freehold
and remainder
man,

defeasance be recorded at large in the Registry of Deeds, in which the original deed referred to in the said bond, deed, or other instrument of defeasance, shall have been recorded.

SEC. 4. *Be it further enacted,* That it shall be lawful for any person or persons, who shall be seized and possessed of any lands, tenements, or hereditaments within this State, in fee tail, being of full age, by deed duly executed before two or more credible subscribing witnesses, acknowledged before the Supreme Judicial Court in any county, or the Circuit Court of Common Pleas in the county where such lands lie, or before any Justice of the Peace in this State, or before a Justice of the Peace or Magistrate in some other of the United States of America, or in any other State or Kingdom wherein the grantor or vender may reside at the time of making and executing the deed, and recorded in the record of deed for such county, for a good or valuable consideration, *bona fide*, to give, grant, sell and convey such lands, tenements, or hereditaments, or any part thereof in fee simple, to any person or persons capable by law, of taking and holding real estates, in this State ; and such deed so executed, acknowledged and recorded, shall be sufficient and effectual in law, to bar all estates tail in such lands, tenements or hereditaments ; and all right and title of the tenant or tenants in tail, and their issue in tail, and of all others claiming under, and by force of the original gift or grant which created such estate tail in and to such lands, tenements or hereditaments, and all reversions and remainders, expectant upon the determinations of such estates tail, and to pass, and to vest the absolute inheritance in fee simple of such lands, tenements, or hereditaments, in such purchasers or grantees, without any fine or common recovery, made or suffered, or any other act or ceremony whatever, any law, custom or usage to the contrary notwithstanding.

SEC. 5. *Be it further enacted,* That in all cases whatever, where an estate tail in remainder in lands and tenements, together with all remainders and reversions expectant on the determination thereof, might by law be barred by a common recovery, duly suffered, by the tenant of the freehold and remainder man joining therein, such estate tail, with all such remainders and reversions expectant on the determina-

tion thereof, shall be as effectually barred, to all intents and purposes, by the deed or deeds of the tenant of the freehold and of the remainder man, as the same could be barred by the suffering such common recovery; and the person or persons, to whom such deed or deeds shall be so made shall hold the lands and tenements so conveyed, to such uses as may be therein expressed, in the same manner as though such uses had been so expressed in the deeds made, declaring the uses for which such common recovery might have been suffered: *Provided*, That such deed or deeds made for the purposes aforesaid, be duly executed, acknowledged and recorded as provided in this Act.

if executed as before mentioned.

SEC. 6. *Be it further enacted*, That all lands, tenements or hereditaments, in this State held, or that may be held in fee tail, general or special, shall be and are hereby declared to be liable and subject to the payment of the debts of the tenant in tail, in the same way and manner as other real estates are liable and subject, as well after the decease, as in the life time of such tenant in tail.

All lands held in fee tail liable to debts of tenant, as lands in fee simple.

SEC. 7. *Be it further enacted*, That all pews and rights in houses of public worship, shall be hereafter considered and deemed in law, to be real estate; but nothing in this Act shall be construed to affect in any manner the titles to any such pews and rights heretofore considered or acquired, as of personal estate.

Pews in meeting houses—real estate.

SEC. 8. *Be it further enacted*, That all deeds and conveyances of, and executions extended on such pews and rights may be recorded by the Clerk of the town or plantation wherein the same is situated; and being so recorded shall have the same effect in law, as if the same had been recorded in the Registry of Deeds.

Deeds of pews may be recorded by the town clerk.

{Approved February 20, 1821.}

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CHAPTER XXXVII.

An Act for the Partition of Lands or other Real Estate.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That all persons having or holding, or that hereafter shall have or hold any lands,

Tenants in common, &c. may sue for

partition at
common law.

tenements, or hereditaments, as tenants in common, joint tenants, or coparceners, may be compelled by writ of partition at the common law, to divide the same: and whereas the partition of lands and other real estate among the persons interested, though much desired and of great advantage, is often hindered and delayed by reason that infants are interested, or that the parties concerned are numerous and live remote from each other, and sometimes in parts beyond seas, and are some of them unknown:

Persons inter-
ested in com-
mon, &c. may
petition Courts
for partition—

SEC. 2. *Be it therefore enacted*, That any person or persons interested with others in any lot, tract of land, or other real estate, making application (either by themselves or their agents, attornies, or guardians,) to the Supreme Judicial Court or Circuit Court of Common Pleas of the county in which such land or other real estate lies; the said Courts are severally authorized and empowered to cause partition to be made of such lands or other real estate, and the share or shares of the party or parties applying for the same, to be set off and divided from the rest. The partition to be made by five or three freeholders under oath, to be appointed by the said Court, who shall order the partition, and a return of such partition, to be made into the Clerk's office of the said Court; and the partition or division so made being accepted by the said Court, which ordered the division to be made, and there recorded, and also recorded in the Registry of Deeds, in the county where such estate lies, shall be valid and effectual to all intents and purposes.

to be made by
3 or 5 free-
holders—

accepted and
recorded—ef-
fect thereof.

Notice to be
given before
partition is or-
dered.

SEC. 3. *Be it further enacted*, That neither of the said Courts shall proceed to order such partition, until it shall appear to them respectively, that the several persons interested in such estate and living within the State, or the attornies of such as are absent, and have attornies residing in the State, have been duly notified of such petition, (by being personally served with a copy thereof or a copy left at their dwelling house, or last place of abode, or that the substance of the petition shall have been inserted three weeks successively in one or more of the public newspapers) and have had an opportunity to make their exception to the granting the same.

SEC. 4. *Be it further enacted,* That when the facts alleged, in any petition for partition hereafter to be preferred, are controverted by any of the tenants in common, the answer or objection to the petition, shall be made in writing, in the form of a plea, to which the petitioner may reply or demur, to the end the matter in dispute may be reduced to an issue in law or fact, and receive a determination by the Court or a Jury, in the manner other issues are determined: And in case the issue be determined in favour of the petitioner, judgment shall be entered up by the Court, that partition be made by disinterested freeholders, and proceed to appoint them accordingly: And also that the petitioner recover against the adverse party the costs attending the trial, and may issue execution for said costs in the form prescribed by law as in other cases. But if on such pleading it be determined that the petitioner holds a less share or proportion in common and undivided than he has in his petition alleged, the adverse party shall recover against the petitioner his reasonable cost; notwithstanding judgment may be rendered in favour of the petitioner to have an assignment of such part of the real estate in severalty, as he in fact holds in common and undivided.

When facts are contested, a trial to be had in usual form.

If petitioner owns less than he claims, respondent entitled to costs.

SEC. 5. *Be it further enacted,* That either party may appeal from the judgment of the Circuit Court of Common Pleas, that partition shall be made, to the Supreme Judicial Court, before the appointment of freeholders to make partition: But if no appeal is made until after the return of the freeholders, and the judgment of the Court thereon, the judgment that partition shall be made, shall not by such appeal be again called in question. And the Supreme Judicial Court shall upon the complaint of the appellee, (in case the appellant shall fail to enter or prosecute his appeal,) affirm the former judgment, and cause such other proceedings to be had thereon, as to have partition completed in the same way and manner as if the proceedings had been originally commenced in that Court.

Appeal from C. C. C. Pleas, and effect thereof.

SEC. 6. *Be it further enacted,* That in all actions of partition that shall be hereafter commenced, the same rule and regulations shall take place with respect to an appeal from an interlocutory judgment of the Circuit Court of Common

In actions the appeal, &c. effect; same as in petitions.

Pleas, that partition shall be made, as is herein before prescribed upon the like judgment upon a petition for partition.

Before partition, Court to appoint guardians for minors, and agents for absent persons interested.

Sec. 7. *Be it further enacted,* That before partition be made where any infants, persons *non compos mentis*, or otherwise incapacitated to take care of their estates, are interested, guardians shall be appointed for all such persons by the Court, if they live within this State, and if any person or persons interested in any such estate happen, (at the time when such application shall be made) to have been beyond sea, or out of this State for the space of one year, and not returned; and having no sufficient attorney within the same; in such case the said Court to whom application shall be made for partition, shall appoint some discreet and disinterested person or persons, as agent or agents for such absent party or parties, to be advising on his or their behalf in making such partition; and due notice shall be given by the committee to all concerned, (that are known and within the State,) before such partition be made, that they may be present, (if they see meet) at the time of making the same.

Committee to give notice before proceedings.

New partition to be made, in certain cases, on complaint.

Sec. 8. *Be it further enacted,* That if any partner shall have a larger share set off than is such partner's true and real interest, or if any share set off should be more than equal in value to the proportion it was set off for, then and in every such case upon complaint to the Court which caused such partition to be made, within three years of the making thereof, by any aggrieved partner or partners, who at the time of making such partition were out of the State, and not notified thereof as aforesaid seasonably to be present at the same, the said Court shall cause partition thereof to be made anew. And in such new partition so much and no more shall be taken off from any share as such share shall be adjudged more than the proportion of the whole it was designed for, estimating such lands or real estate as in the state they were in when first divided; and in case any improvements shall be made on the part that may by such new partition be taken off as aforesaid, the partner who made such improvements shall have reasonable satisfaction made him by the partner or partners to whose share the same shall be added, by the estimation of the freeholders

Mode of making it and adjusting claims.

employed in making such new partition, or the major part of them: And the Justices of the same Court who ordered partition, are also empowered to issue execution for such satisfaction, and for costs in such new partition, the same being first taxed and allowed in the said Court.

Sec. 9. *Be it further enacted*, That when partition shall be made as aforesaid, if any one or more of the interested parties applying, shall neglect or refuse to pay their just proportion of the charges which may attend such division, it shall and may be lawful for the said Court who ordered the partition, to issue an execution against the delinquent or delinquents interested, and applying as aforesaid: *Provided*, an account of such charge be first laid before the said Court who ordered the partition, and the just proportions of the persons interested, settled and allowed, they having been duly notified to be present at such settlement and allowance. And when any messuage, tract of land, or other real estate shall be of greater value than either party's purpart or share in the estate to be divided, and cannot at the same time be subdivided, and part thereof assigned to one, and part to another, without great inconvenience, the same may be settled or assigned to one of the parties, such party to whom the same shall be so assigned, paying such sum or sums of money to such party or parties, as by means thereof have less than their share of the real estate as the committee appointed to make partition, shall award.

Courts may compel petitioners to pay their share of costs.

Special assignment may be to one, in certain cases.

[Approved February 8, 1821.]

CHAPTER XXXVIII.

An Act respecting Wills and Testaments, and regulating the Descent of Intestate Estates.

Sec. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That every person of the age of twenty one years, and of sane mind, lawfully seized of any lands, tenements, or hereditaments, within this State, in his or her own right in fee simple, or for the life or lives of any other person or persons, and every person as aforesaid, being the owner of any personal estate, may give, dis-

Persons who may dispose of real and personal estate by will.

pose of, and devise said real and personal estate by his or her last will and testament in writing, to and among his or her children or others, as he or she may see fit.

Wills to be in writing and signed and attested, &c. by three witnesses.

Wills, &c. how revoked.

SEC. 2. *Be it further enacted*, That all wills of any lands, tenements or personal estate shall be in writing and signed by the party so devising or bequeathing the same, or by some person in his presence, and by his express direction, and shall be attested and subscribed in the presence of the testator, by three credible witnesses, or the same shall be utterly void. And no will in writing, of lands, tenements, hereditaments or personal estate, nor any clause thereof, shall be revoked, except by a subsequent will or codicil in writing, or other writing, declaring the same, or by burning, cancelling, tearing, or obliterating the same by the testator, or in his presence and by his consent and direction; but all wills of lands, tenements, or personal estate, shall remain and continue in full force until the same be burnt, cancelled, torn, or obliterated by the testator, or by his direction, in manner aforesaid, or unless the same be altered by some subsequent will or codicil, or other writing of the testator, signed in the presence of three witnesses, declaring such alteration.

Devises for life and afterwards in fee tail, how construed.

SEC. 3. *Be it further enacted*, That whenever any person shall hereafter, in and by his last will and testament, devise any lands, tenements or hereditaments, to any person for and during the term of such person's natural life, and after his death to his children or heirs, or right heirs in fee, such devise shall be taken and construed to vest an estate for life only in such devisee, and a remainder in fee simple in such children, heirs or right heirs, any law, usage or custom to the contrary notwithstanding.

Soldiers, Mariners, &c. may dispose of personal estate, without formal will,

SEC. 4. *Be it further enacted*, That notwithstanding this Act, any soldier being in actual military service, or any mariner, or seaman being at sea, may dispose of his moveables, wages and other personal estate, as he might have done before the making of this Act.

Nuncupative wills how proved in certain cases.

SEC. 5. *Be it further enacted*, That no nuncupative will shall be good, where the estate thereby bequeathed shall exceed the value of one hundred dollars, that is not proved by the oath of three witnesses, who were present at the making thereof, nor unless it be proved that the testator, at the

time of pronouncing the same, did bid the persons present, or some of them, to bear witness that such was his will, or to that effect, nor unless such nuncupative will were made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she had been resident for the space of ten days or more, next before the making of such will; except where such person was unexpectedly taken sick, being from home, and died before he or she returned to the place of his or her habitation.

Sec. 6. *Be it further enacted,* That no letters testamentary or probate of any nuncupative will shall pass the seal of any Court of Probate, till fourteen days after the decease of the testator be fully expired, nor shall any nuncupative will be at any time approved and allowed, unless due notice shall have been given to all persons interested.

—not till after fourteen days from death of testator, &c.

Sec. 7. *Be it further enacted,* That after six months shall have passed, after speaking any pretended testamentary words, no testimony shall be received to prove the same as a nuncupative will, unless the said words or the substance thereof, were reduced to writing within six days after the same testamentary words were spoken.

—nor after six months from making, unless, &c.

Sec. 8. *Be it further enacted,* That if any person hath attested, or shall attest the execution of any will or codicil, to whom any beneficial devise, legacy, estate, interest, gift or appointment of, or affecting any real or personal estate (other than and except charges on lands, tenements or hereditaments, for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him, be utterly void, and such person shall be admitted as a witness to the execution of such will or codicil, such devise, legacy, estate, interest, gift or appointment, notwithstanding.

Legacies to witnesses of wills to be void, and legatees to be competent witnesses.

Sec. 9. *Be it further enacted,* That in case by any will or codicil already made or hereafter to be made, any lands, tenements or hereditaments, are or shall be charged with any debt or debts, and any creditor whose debt is so charged, hath attested or shall attest the execution of such will or

Creditors, in certain cases, competent witnesses to execution of wills.

codicil, every such creditor notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Legatees in certain other cases may be competent witnesses to wills, &c.

SEC. 10. *Be it further enacted*, That if any person hath attested or shall attest the execution of any will or codicil, to whom any legacy or bequest is or shall be thereby given, and such person before he or she shall give his or her testimony concerning the execution of any such will or codicil, shall have been paid, or have accepted or released, or shall refuse to accept such legacy or bequest, upon tender thereof, such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such legacy or bequest: *Provided always*, That the credit of such witnesses as aforesaid, shall be subject to the consideration of the Court or Jury before whom such witness or witnesses may be examined, or his or her testimony or attestation made use of in like manner, to all intents and purposes as the credit of other witnesses in all other causes ought to be considered of and determined.

Legatees, dying before testator, to be considered legal witnesses.

SEC. 11. *Be it further enacted*, That in case any legatee as aforesaid, who hath attested the execution of any will or codicil already made, or shall attest the execution of any will or codicil which shall hereafter be made, shall have died in the life time of the testator or before he or she shall have received or released the legacy or bequest so given him or her as aforesaid, and before he or she shall have refused to receive such legacy or bequest, on tender made thereof, such legatee shall be deemed a legal witness to the execution of such will or codicil notwithstanding such legacy or bequest.

No legatee, made hereby a competent witness, shall afterwards receive any benefit from such will by legacy or otherwise.

SEC. 12. *Be it further enacted*, That no person to whom any beneficial estate, interest, gift or appointment shall be given or made, which is hereby enacted to be null and void as aforesaid; or who shall have refused to receive any such legacy or bequest, on tender made as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he or she shall have been so examined, demand or receive any profit or benefit of or from any such estate, interest, gift or appointment, so given or made to him or her in and by any such will

or codicil, or, demand, receive or accept from any person or persons whatsoever any such legacy or bequest or any satisfaction or compensation for the same in any manner whatever.

Sec. 13. *Be it further enacted,* That when any testator in and by his last will and testament, hath given or shall give any chattels or real estate to any person or persons, and the same shall be taken in execution for the payment of the testator's debts, or shall be sold therefor as the law provides, in such case, all the other legatees, devisees and heirs, shall refund their average or proportional part of such loss to such person or persons from whom the bequest shall be so taken away, and he or they shall and may maintain a suit or action at law to compel such contribution.

Legatee having his part taken on execution for testator's debts to be refunded by other devisees, &c.

Sec. 14. *Be it further enacted,* That when any child shall happen to be born after the death of the father, without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father, in like manner as if the father had died intestate, and the same shall be assigned to him or her accordingly; and in every such case the Judge of Probate shall issue his warrant, as in case of intestate estates, to assign to such posthumous child, a share in his or her father's estate equal to what he would have inherited, if his or her father had died intestate; and the same shall be taken in proportion from the devisees and legatees, who own the estate by virtue of such will.

Posthumous children provided for.

Sec. 15. *Be it further enacted,* That any child or children, or their legal representatives, in case of their death, not having a legacy given him, her or them, in the will of their father or mother, shall have a proportion of the estate of their parents assigned unto him, her or them, as though such parent had died intestate: *Provided,* such child, children or grand children have not had an equal proportion of the deceased's estate bestowed on him, her or them, in the deceased's life time. And when any child, grand child or other relation, having a devise of real or personal estate, and such devisee shall die before the testator, leaving lineal descendants, such descendants shall take the estate real or personal in the same way and manner, such devisee would

Children, &c. not named in the will of their parents to inherit as in cases of intestacy—provided, &c.

Widow may wave provision in husband's will & claim her dower.

have done, in case he had survived the testator, any law, usage or custom to the contrary notwithstanding. Also the widow in all cases may wave the provision made for her in the will of her deceased husband, and claim her dower and have the same assigned her in the same manner as though her husband had died intestate.

Estate not devised to be distributed as intestate.

Sec. 16. *Be it further enacted,* That all such estate, real or personal, that is not devised or bequeathed in the last will and testament of any person, hereafter to be proved, shall be distributed in the same manner as if it were an intestate estate.

Intestate estates how to descend and be distributed.

Sec. 17. *Be it further enacted,* That when any person shall die seized of any lands, tenements, or hereditaments, or any right thereto, or entitled to any interest therein, in fee simple, or for the life of another, not having lawfully devised the same, the same shall descend in equal shares to his children, and to the lawful issue of any deceased child by right of representation; and when the intestate shall leave no issue, the same shall descend to his father; and when there shall be no issue nor father, the same shall descend in equal shares to the intestate's mother, if any, and to his brothers and sisters, and the children of any deceased brother or sister by right of representation; and if the intestate leave no issue, father, brother or sister, then the same shall descend to his mother, if any, but if there be no mother, then to his next of kin, in equal degree; the collateral kindred claiming through the nearest ancestor, to be preferred to the collateral kindred claiming through a common ancestor more remote; and the degrees of kindred, in all cases to be computed according to the rules of the civil law; and when there shall be no kindred the same shall escheat to the State, saving always to the intestate's husband his tenancy by the courtesy; and to his widow, her dower at the common law, unless she be lawfully barred of the same: *Provided however,* That when any child shall die under age, not having been married, his share of the inheritance that came from his father or mother, shall descend in equal shares to his father's or mother's other children then living respectively, and to the issue of such other children as are then dead, if any, by right of representation: And

Rules in regard to kindred, and mode of computing degrees.

Proviso as to children dying under age, &c.

provided further, That when the issue or next of kin to the intestate, who may be entitled to his estate by virtue of this Act, are all in the same degree of kindred to him, they shall share the same estate equally, otherwise they shall take according to the right of representation.

SEC. 18. *Be it further enacted*, That when a man and his wife shall be seized of lands, tenements or hereditaments, in her right in fee, and issue shall be born alive of the body of such wife, that may inherit the same, and such wife shall die, the husband shall have and hold such estate during his natural life, as tenant by the courtesy. And the widow of the deceased shall in all cases, be entitled to her dower in the real estate (where she shall not have been otherwise endowed before marriage) and to a recovery of the same in manner as the law directs.

Tenancy by the courtesy.

Dower of widows.

SEC. 19. *Be it further enacted*, That when any person shall die possessed of any personal estate, or of any right or interest therein not lawfully disposed of by last will, the same, after allowing, to the widow, if any, her wearing apparel, according to the degree and estate of her husband, and such further necessities as the Judge of Probate shall order, regard being had to the state of the family under her care, shall first be applied to the payment of the intestate's debts with the charges of his funeral, and of settling his estate; and the residue, if any, shall be distributed among the same persons in the same proportion to whom the real estate shall by law descend; *Provided however*, That the husband of the intestate shall be entitled in all cases, to the whole of the said residue; and further that if the intestate shall leave a widow and issue, the widow shall be entitled to one third part of the said residue; or if there be no issue, to one half part thereof; or if there be no kindred to the said intestate, then she shall be entitled to the whole of said residue: *And provided further*, That when there shall be no husband, widow nor kindred to the intestate, the whole of the said residue shall escheat and enure to the State.

Personal estate how distributed, after payment of debts, &c.

Proviso as to husband of intestate.

When no kindred to escheat to State.

[Approved March 20, 1821.]

CHAPTER XXXIX.

An Act respecting Mortgages, and the Rights in equity of Redemption.

Rights of redemption for 3 years after entry of mortgagee.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That where any mortgagee or vendee, claiming any lands or tenements granted upon condition by force of any deed of mortgage or bargain and sale with defeasance, or any person claiming and holding under them, have lawfully entered and obtained, or shall lawfully enter and obtain, the actual possession of such lands or tenements, for the condition broken, the mortgagor or vendor, or other person lawfully claiming under them, shall have right to redeem the same, at any time within three years next after such possession obtained, and not afterwards; and upon payment or tendering of payment of the original debt and damages, with lawful interest and costs, or performing or tendering performance of such other condition, as the case may require, or such part thereof as was remaining unpaid or unperformed at the time of such entry, together with such further reasonable sums as may have been disbursed and expended in necessary repairs of fences and buildings, and for the advancing and bettering such estate, over and above what the rents and profits thereof, upon a just computation, shall amount to, to such mortgagee, vendee or person lawfully claiming and holding under them, and in possession as aforesaid, within the time aforesaid; such mortgagee, vendee, or other person claiming, and in possession as aforesaid, to whom such tender has been, or shall be made, shall be obliged to accept such payment, or other performance of the condition, and thereupon to restore and deliver possession of such estate, and seal, execute, acknowledge and deliver a good and sufficient deed in the law of release and quitclaim, and all his right therein, to the person making such tender, having lawful right to redeem the same, or cause satisfaction and payment to be entered in the margin of the record of such mortgage in the Register's office, and shall sign the same, which shall forever after discharge and release such mortgage, and perpetually bar all actions to be brought thereupon in any Court of Record. And if, on payment or tendering of payment, performance

on tendering of performance as aforesaid, such mortgagee, vendee, or person lawfully claiming or holding under them, and in possession as aforesaid, doth or shall refuse or neglect to deliver possession, and release his right in such estate as aforesaid; such mortgagor, vendor or other person lawfully claiming as aforesaid, may have his bill in equity originally triable in the Supreme Judicial Court, or Circuit Court of Common Pleas in the county where the estate lies, and shall insert the same in a writ of attachment or original summons, returnable to the Court whose seal it shall bear, and shall cause such writ to be served on the adverse party, as other writs of attachment or original summons are by law to be served: *Provided however*, That the entry above described, shall be, by process of law, or by the consent in writing of the mortgagor or those claiming under him, or by the mortgagee's taking peaceable and open possession of the premises mortgaged, in presence of two witnesses.

Process in equity, in case mortgagee refuse to restore possession.

Proviso as to nature of mortgagee's entry.

SEC. 2. *Be it further enacted*, That the Justices of either of said Courts are hereby empowered and authorized to receive and hear every such cause, as shall be brought before them as aforesaid; and on consideration of the several pleas and allegations made by either party (or by the party complaining, only in case the other party upon being duly called does not appear, but makes default) to decree and enter up judgment therein, agreeably to equity and good conscience, and to award execution accordingly; and in case of non-appearance of the party complained of, or of his refusal to accept such sum as the Court shall adjudge to be due, or to accept such other act or thing as the Court shall adjudge a reasonable and equitable performance of the condition of the deed, and thereupon to restore possession and execute a release as aforesaid, such sum being left in the custody of the Court on behalf and for the use of such party, or such other act or thing as the Court shall order and direct, being done by the complainant, judgment shall be entered up for the complainant to recover possession of such estate, and execution shall issue accordingly; and the Court may, at their discretion award costs to either party, as equity may require: *Provided*, That nothing herein contained shall be

Proceedings on the mortgagor's bill in equity.

Proviso for appeal from C. C. of C. Pleas.

construed to prevent an appeal from the judgment of any Circuit Court of Common Pleas, rendered upon any process given by force of this Act.

Judgment on mortgages to be conditional.

SEC. 3. *Be it further enacted*, That in all real actions, on mortgage, or bargain and sale with defeasance, the judgment shall be conditional, that if the mortgagor or vendor, his heirs, executors or administrators, shall pay unto the mortgagee or vendee, his executors or administrators, such sum as the Court shall adjudge due, within two months from the time of entering up judgment, with interest, then no writ of possession shall issue, otherwise the plaintiff shall be entitled to his writ of possession in due form of law.

In suits for redemption assignees of the estate may be made parties, if necessary :

SEC. 4. *Be it further enacted*, That when it shall appear to the Court, in any suit, which is, or may be pending for the redemption of lands or tenements, granted and held upon condition, by force of any deed of mortgage, or bargain and sale with defeasance, that, by reason of any assignment or conveyance thereof, before the commencement of such suit, or for any other cause, it is necessary to the attainment of justice, that some other person claiming or holding by force of such conveyance, should be made party to the suit with the original defendant, the Court may, on motion, and upon such terms, with regard to costs, as they shall deem reasonable, order such person to be made a party to the suit, by serving him with an attested copy of the original bill in equity, and the motion and order thereon, in such manner as the Court may direct. And upon the appearance or default of the person so summoned, the suit shall proceed in the same manner as if he had been originally made a defendant.

Proceedings if they appear.

Court may enter decree and issue executions jointly or severally.

SEC. 5. *Be it further enacted*, That when a decree shall be made for the redemption of any lands or tenements granted and held as aforesaid, the Court shall have power to enter a decree or judgment, and to award execution against any defendant or defendants, jointly or severally, as the case may require, for such amount in damages, as shall, in equity and good conscience, be found due from him or them respectively, for the rents and profits received, over and above the sums reasonably expended in repairing and bettering the estate to be redeemed.

SEC. 6. *Be it further enacted,* That when any sum of money shall have been brought into Court, in any suit for the redemption of lands or tenements, granted and held as aforesaid, the Court shall have power to deduct therefrom such sum as the party for whose use it was brought in, may be justly chargeable with, by reason of rents and profits which he has received, or costs awarded against him in the same suit; and the amount so deducted, shall be restored to the party who brought in the same. And if any person to whom money is tendered, in order to redeem lands or tenements granted and held as aforesaid, shall receive of the person tendering the same, a larger sum than he is justly entitled to retain, he shall be held to account for the excess, in manner aforesaid.

Court may deduct from money brought in the amount received by mortgagee for rents, &c. & restore it to the mortgagor.

SEC. 7. *Be it further enacted,* That whenever any mortgagor, who shall have mortgaged any real estate to the State, his executors, administrators, heirs or assigns, shall pay in to the treasury the full sum due on such mortgage, the Treasurer may, and it shall be his duty, to sign and seal a discharge of such mortgage, and to release and quitclaim to the estate therein mentioned to be granted; and to acknowledge the same before a Justice of the Peace; which deed being recorded in the Registry of Deeds for the county where such estate is situate, shall effectually discharge such mortgage to all intents and purposes: *Provided however,* That nothing in this Act shall be construed to authorize any mortgagor, his heirs, executors, administrators or assigns, to redeem any mortgaged premises, after the expiration of three years from the entry of the State by the Treasurer, or his substitute, or any other person thereto authorized by law upon the mortgaged premises, for the breach of the condition of the mortgage.

State Treasurer may discharge a mortgage to the State.

No redemption, after end of 3 years from entry by treasurer.

SEC. 8. *Be it further enacted,* That whenever there shall be a disagreement between the Treasurer for the time being, and the person applying to redeem any real estate mortgaged to the State, as to the sum equitably due on such mortgage, the person so applying and having a right to redeem such estate, may file a bill in equity for the redemption thereof, in the Supreme Judicial Court in the county of Cumberland, and the same Court shall cause an attested

In case of disagreement between treasurer and mortgagor, he may file bill in equity.

Proceedings
thereon.

Proviso as to
costs and
charges.

copy of such petition, with a summons thereon, to appear at the next term of said Court in said county, to be served fourteen days before the commencement thereof, on the Treasurer, who is hereby authorized in behalf of the State, to appear in said Court and answer to such petition; and the said Court within said county shall proceed to hear the parties, and shall determine and adjudge what sum is justly due on said mortgage to the State; and the Treasurer shall be empowered, and it shall be his duty to accept the sum adjudged by said Court, to be due on said mortgage, and upon receiving the same to discharge and release such mortgage in the manner prescribed in the third section of this Act: *Provided always*, that all the costs and charges of discharging such mortgage, and of the process for ascertaining the sum due on the same, shall be borne by the person or persons, applying to redeem the estate mortgaged, and not by the State or the Treasurer.

In case of
mortgagee's
death before
obtaining pos-
session, his ex-
ecutor or ad-
ministrator
may dispose of
the property
as personal es-
tate,

and may bring
action for
mortgaged es-
tate,

of which when
recovered
they shall be
seized to use
of heirs, &c.

Sac. 9. *Be it further enacted*, That whenever any person or persons, to whom any lands, tenements or hereditaments may be mortgaged for the payment of debts, or the performance of any collateral promise or engagement whatsoever, shall decease before recovery of seizin and possession of the lands, tenements or hereditaments mortgaged, that then the debts due, on said deed or mortgage, and the lands, tenements or hereditaments, mortgaged by the same, shall be assets in the hands of executors or administrators, as personal estate, and the executors or administrators shall have the same control and power of disposal of all the estate which the said deceased had, in the lands, tenements and hereditaments mortgaged, as if they had been a pledge of personal estate; and executors or administrators may bring actions for recovery of seizin and possession of the lands, tenements and hereditaments mortgaged, as aforesaid; in which actions, it shall be sufficient to declare on the seizin and possession of the testator or intestate. And whenever executors or administrators shall recover seizin or possession of lands, tenements or hereditaments mortgaged as aforesaid, the executors or administrators, shall be seized and possessed of the estate so recovered to the sole use and

behoof of the widow and heirs of the intestate, or such devisees of the testator to whom said estate may be devised.

SEC. 10. *Be it further enacted,* That after executors or administrators shall recover seizin and possession of any lands, tenements or hereditaments, mortgaged as aforesaid, if any mortgagor, his heirs, executors, administrators or assigns, shall within the time limited for redeeming the estate mortgaged, redeem the mortgaged premises, the executors or administrators shall be entitled to receive the said redemption money, and are hereby authorized, empowered and directed to discharge the said mortgaged premises by release, quitclaim or other legal conveyance.

Executors and administrators having so recovered seizin of mortgaged estate, may receive redemption money & discharge mortgage.

SEC. 11. *Be it further enacted,* That in case the purchaser of any right in equity to redeem mortgaged real estate taken and sold on execution and redeemed from such sale by the execution debtor or debtors, within one year next after the time of executing, by the officer to the purchaser aforesaid, the deed thereof by the payment, by the debtor or debtors of such sum, as may by such sale, have been satisfied on such execution, with the interest thereof, deducting the rents and profits the purchaser or any under him may have received over and above repairs made by the purchaser or any under him, shall have satisfied and paid the mortgagee, his heirs or assigns, the sum due on said mortgage, the mortgagor shall have the right to redeem such mortgaged estate of such purchaser, or any under him, at the time and in the way and manner he might have redeemed the same of the mortgagee, had no such sale been made, and at such time only.

Mode of redeeming an estate from the purchaser of a right in equity taken on execution.

[Approved February 5, 1821.]

CHAPTER XL.

An Act concerning Dower.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That when the heir or tenant of the freehold, shall not within one month next after demand, assign and set out to the widow of the deceased her dower in all lands, tenements or hereditaments whereof

Dower to be assigned within one month after demand —if not widow may sue:

by law she is or may be dowable, according to the true intendment of the law, then such widow may sue for and recover the same by writ of dower, of such heir, or tenant of the freehold.

and in such suit she may recover damages also, from time of demand.

Sheriff, on writ of seizin to cause dower to be set off by 3 disinterested freeholders on oath.

Dower of rents and profits may be assigned of rents and profits.

Alien widow of a citizen dowable.

Where husband dies seized, widow entitled to one third of rents, income, &c. until dower shall be assigned.

Nature of the estate of which a widow may be endowed;

SEC. 2. *Be it further enacted*, That upon rendering judgment for any woman to recover her dower in any lands, tenements or hereditaments, reasonable damages shall be awarded to her from the time of such demand and refusal: And a writ of seizin shall be directed to the Sheriff of the county or his deputy, who shall cause her dower in such estate to be set out to her by three disinterested freeholders of the same county, who shall be under oath to set out the same equally and impartially, without favour or affection, as conveniently as may be.

SEC. 3. *Be it further enacted*, That of estates of which a woman is dowable, and where no division can be conveniently made by metes and bounds, dower shall be assigned in a special manner, as of a third part of the rents or profits to be computed and ascertained in manner as aforesaid.

SEC. 4. *Be it further enacted*, That the widow of any citizen of the United States, who may have been, or who shall be an alien at the time of intermarriage with such citizen, shall be entitled to dower in her husband's estate in this State in the same manner as other widows are by virtue of this Act.

SEC. 5. *Be it further enacted*, That in all cases, where any person has died or shall die, seized of any estate, leaving a widow who is lawfully entitled to dower therein, such widow shall be entitled to have and receive one undivided net third part of the rents, income and profits of such estate until the heir or heirs of such deceased person shall assign and set out to such widow her dower according to law, or until the same shall be actually assigned and set out to her under a judgment of Court, or on order of a Court of Probate.

SEC. 6. *Be it further enacted*, That the estate in which a widow shall have a right to claim dower by this Act, in all such lands, tenements and hereditaments of which the husband was seized, in fee, either in possession, reversion or remainder, at any time during the marriage, except where

such widow, by her own consent, may have been provided for by way of jointure, prior to the marriage, or where she may have relinquished her right of dower by deed under her hand and seal. except where she may have released her dower.

[Approved February 19, 1821.]

CHAPTER XLI.

An Act to provide for the Location of certain Lands.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That wherever in the grant of any township, or parts thereof heretofore made, or which may be made hereafter, there may be certain lots therein reserved for the use of said township, and for public uses, and the lots so reserved as aforesaid, shall not be located by the grantee or grantees of such township, or part thereof by the time the said township may be incorporated, it shall and may be lawful for the Justices of the Circuit Court of Common Pleas within the county where such land lies, on application made to them by the assessors of such town, or a major part of them, and no sufficient cause being shown to the contrary, to appoint a committee, by issuing their warrant under the seal of said Court, directed to three disinterested freeholders of said county, requiring them as soon as may be to locate the several lots in said township reserved as aforesaid, and to designate the several uses for which the said lots were respectively reserved in the original grant of the said town, or of the parts thereof; the said lots to be of an average quality with the residue of lands in the said town. Reserved lots may be located by the C. C. Com. Pleas on application of Assessors, &c.

SEC. 2. *Be it further enacted,* That the said committee previous to their proceeding to execute the warrant aforesaid, shall be sworn to the faithful discharge of their duty by any Justice of the Peace within said county, a certificate thereof to be made on the back of said warrant; and shall give notice of their appointment, and of the time and place of their meeting to execute said warrant, by causing the same to be published in one or more newspapers printed in the State, and by posting up written notifications in two or more pub- by a committee of 3 disinterested freeholders, designating the several uses for which they were reserved in the grant. Committee to be sworn, and give notice.

mode of giving notice.

lic places within the town where said land lies, at least thirty days prior to their making the location aforesaid.

Committee to make return under their hands and seals soon as may be.

SEC. 3. *Be it further enacted,* That the said committee shall make return of said warrant, under their hands and seals, or the hands and seals of a majority of them, with their doings therein, to said Circuit Court of Common Pleas, as soon as may be after their service is performed; and the same being accepted by the said Court, and being recorded in the office of the Registry of Deeds in said county within six months from the date of the said return, shall be the legal assignment of the said lots to the several uses for which they were reserved.

Return accepted and recorded to be a legal assignment.

If location be made by any proprietor and returned to C. C. Com. Pleas—such Court may confirm it.

SEC. 4. *Be it further enacted,* That whenever any proprietor or proprietors of any grant of land shall locate such lots as may have been reserved for public uses, and make a return thereof to the said Circuit Court of Common Pleas, it shall be lawful for the said Court to confirm the same, and when so done, such lot shall be deemed legally located, and assigned for the uses intended and mentioned in the original grant of the same.

[Approved March 15, 1821.]

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CHAPTER XLII.

An Act for the better securing, and rendering more effectual, Grants and Donations to Pious and Charitable uses.

Preamble.

WHEREAS many grants and donations have heretofore been made by sundry well disposed persons, in and by such expressions and terms as plainly show it was the intent and expectation of such grantors and donors, that their several grants and donations should take effect, so as that the estates granted should go in succession; but doubts have arisen in what cases such donations and grants may operate so as to go in succession, for ascertaining whereof:

Deacons of Protestant churches, not episcopal, and church wardens of episcopal churches to be bodies corporate and take lands, &c. in succession &c.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That the deacons of all the several Protestant churches, not being episcopal churches, and the church wardens of the several episcopal churches, are, and shall be deemed so far bodies corporate, as to take in succession all grants and donations, whether real or personal made either to their several churches, the poor of their churches, or to them and their successors, and to sue

and defend in all actions touching the same; and whenever the ministers, elders or vestry, shall in such original grants or donations have been joined with such deacons or church wardens as donees, or grantees in succession, in such cases, such officers and their successors together with the deacons or church wardens, shall be deemed the corporation for such purposes as aforesaid; and the minister or ministers of the several Protestant churches, of whatever denomination, are, and shall be deemed capable of taking in succession any parsonage land or lands, granted to the minister and his successors, or to the use of the ministers; and of suing and defending all actions touching the same; saving that nothing in this Act shall be construed to make void any final judgment of any Court of Common law or Probate; saving also that no alienation of any lands, belonging to churches hereafter made by the deacons, without the consent of the church, or a committee of the church for that purpose appointed, or by church wardens, without the consent of the vestry, shall be sufficient to pass the same; and that no alienation hereafter made by ministers of lands by them held in succession, shall be valid any longer than during such alienors continuing ministers unless such ministers be ministers of particular towns, districts or precincts, and make such alienation with their consent respectively; or unless such ministers so aliening be ministers of episcopal churches, and the same be done with the consent of the vestry; and the several churches in this State, not being episcopal churches, are hereby empowered to choose a committee to call the deacons or other church officers to an account; and if need be, commence and prosecute any suits touching the same, and also to advise and assist such deacons in the administration of the affairs aforesaid.

Ministers of all Protestant churches may take lands, &c. in succession granted to the ministry or use of the ministry.

How alienations of such property must be made to be legal and effectual.

SEC. 2. *Be it further enacted,* That the income of the grants made, or to be made to any one such body politic for pious and charitable uses, shall not exceed the sum of six hundred dollars per annum.

Limitation of income of such estate.

[Approved March 2, 1821.]

CHAPTER XLIII.

An Act for the better managing Lands, Wharves and other real estate, lying in common.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That when and so often, as any five, or a major part of the proprietors of lands, wharves, or other real estate lying in common, in any part of this State, shall judge a proprietors' meeting to be necessary, they may make a written application to a Justice of the Peace through the State, or to a Justice of the Peace within the county where such estate lies, for a warrant for the calling of a meeting, expressing the time, place and occasion thereof; and such Justice is hereby empowered to grant a warrant for such meeting accordingly, directed to one of the proprietors asking the same, or to the proprietor's clerk, requiring him to notify the proprietors of the meeting, and the time, place and occasion of the same; which notification, in case such estate lies in any incorporated town, shall be given in writing and posted up in some public place or places within such town fourteen days at least before the day appointed for the meeting, and for the like time before such meeting shall be advertised in one of the Portland newspapers, and in one of the newspapers (if such there be) printed in the county wherein such real estate lies; or in case such estate doth not, or shall not lie within any incorporated town, such written notification shall be given by advertising the same in any two of the said Portland newspapers and in one other newspaper, (if such there be) printed out of Portland in the county where such estate lies, at least four weeks successively before such meeting; or such meetings may be otherwise warned by posting up written notifications in some public place in each and every town and plantation where any one or more of the said proprietors may reside, fourteen days at least before the time appointed for holding such meeting; and such and so many of the proprietors as shall assemble personally, or by their attornies, and meet accordingly, shall have power by a major vote to choose a moderator, a clerk, a

Any five proprietors may apply to a Justice to call a meeting—

either a Justice through the State, or of the county where the lands lie—

Such Justice may issue warrant to one of the proprietors to notify it to be holden at the time & place requested.

Manner in which notice is to be given.

What measures the proprietors may adopt when met.

treasurer, a collector or collectors of taxes, a committee or committees, and any other needful officers to manage their affairs; which clerk shall enter and record all votes and orders that from time to time shall be made and passed in the proprietors' meetings, who shall be sworn to the faithful discharge of his office; and to agree upon and appoint any other way or method of calling and summoning meetings for the future, that shall be most suitable and convenient to the proprietors; and also to pass votes or orders for the settling, or encouraging the settling, managing, improving, or dividing such common lands, wharves or other real estate not before severed and divided; and to annex penalties to the breach and non observance of such orders; *Provided*, such penalty doth not exceed three dollars for one offence: *Provided also*, that such orders so made, with penalties, annexed to them, be allowed and approved by the Court of Sessions for the county where such land or estate lies, and be not repugnant to the general laws of this State; in which case such orders shall have such force and effect as that such proprietors by their treasurer, agent or agents, may recover the penalty thereto annexed against the breakers or non observers thereof, in any Court proper to try the same; such penalty to be disposed of as the proprietors shall direct. And the votes shall always be collected and numbered according to the interest of the proprietors present where the same is known. And no other affair shall be acted on at any meeting of the proprietors, than what is expressed in the warrant or notification for such meeting.

Proprietors to vote according to their interest.

No business to be acted upon, unless expressed in the warrant.

SEC. 2. *Be it further enacted*, That the moderator, chosen at any such meeting, shall be thereby empowered to manage and regulate the business of that meeting. And where it shall so happen that any matter remains doubtful after a vote, the moderator is hereby directed and required to cause the same to be decided by the poll, if any one or more desire it; such polls to be numbered according to their interest.

Power of the moderator.

SEC. 3. *Be it further enacted*, That it shall and may be lawful for all proprietors in common and undivided lands, grants and other real estate, or interests whatsoever, to sue, commence and prosecute any suits or actions in a Court

Proprietors may prosecute and defend suits by agents and attorneys;

proper to try the same, either by themselves, or their agents, or attornies; and in like manner to defend all such suits and actions as shall be commenced against them or any of them.

—and at any legal meeting may raise monies for the purposes of the propriety;

and assess the proprietary rights in common.

If assessments are not paid within the times appointed,

and after due notice,

Committee may sell at auction so much as necessary of delinquent proprietors' rights, &c.

Notice of such sale being previously given. Mode of notice.

SEC. 4. *Be it further enacted,* That it shall and may be lawful to and for the proprietors of any common and undivided lands or other real estate, or the major part of them according to the interest of the proprietors present, by themselves or their lawful attornies, at any legal meeting to vote, grant or order the raising of any suitable sum or sums of money, that shall by them be thought sufficient for bringing forward, completing the settlement of, or managing or improving such lands and estate, and to carry on and prosecute or defend any actions or suits that may be brought by or against them; or for carrying on, managing, or effecting any other affair for the common good of such proprietors; and to levy and apportion such sum or sums (raised for the ends and uses aforesaid) upon the proprietors' several rights in such common and undivided lands or estates, equally and ratably, according to their several interests therein. And every proprietor who shall neglect to pay to the collector or treasurer, or committee of such propriety, his proportion of such sum or sums of money as have been, or from time to time shall be duly granted and voted to be raised and levied upon the proprietors' rights and shares in such lands and estates, for the space of six months, with respect to those who live within this State, and twelve months with respect to those who live out of it, after such grant, and his or their proportion thereof shall have been posted and published in the several newspapers as in the case of notification as aforesaid, then the committee of the proprietors, or the major part of such committee, may, and are hereby fully empowered from time to time, at a public vendue, to sell and convey away so much of such delinquent proprietors' right or share in such common land or estate as will be sufficient to pay and satisfy his tax or proportion of such grant, and all reasonable charges attending such sale, to any person that will give most for the same, notice of such sale and of the time and place thereof being given by posting as aforesaid, and publishing the same in at least two of the newspapers

aforesaid, five weeks successively before the time of such sale; and may execute a good deed or deeds of conveyance of the lands or estate so sold unto the purchaser thereof, to

Committee
may give
deeds, &c.

hold in fee simple: *Provided nevertheless*, That the proprietor or proprietors whose right or share shall be so sold, shall have liberty to redeem the same at any time within twelve months after such sale, by paying the sum such right or share sold for, and charges, together with the further sum of twelve dollars for each hundred dollars produced by such sale, and so *pro rata* for any less or greater sum.

Proprietor
may redeem
within twelve
months.

Terms of re-
demption.

Sec. 5. *Be it further enacted*, That the treasurer, assessors, collector or collectors, which at any time may be chosen by the proprietors of any common and undivided lands or other real estate, shall be sworn before a Justice of the Peace to the faithful discharge of their respective trusts, and in case no Justice of the Peace shall be present at the meeting of such proprietors, then any, or all the officers directed to be sworn by this Act, may be sworn by the moderator; and such treasurer is hereby empowered to demand, sue for, recover and receive all such sums of money, debts and dues, as shall at any time belong to the said proprietors, or be any ways due or coming to them, and make payment thereof according as he shall be lawfully ordered and directed by the proprietors, and render his reasonable account thereof on demand; and such treasurer shall continue in his office till the proprietors shall see cause to choose another.

Treasurer,
Assessors, and
Collectors to
be sworn by a
Justice,

or by a mod-
erator in case,
&c.

Treasurer may
collect debts
due proprie-
tors, &c.

Sec. 6. *Be it further enacted*, That the proprietors of such undivided land or estate, where the same hath been heretofore stated and each one's proportion known, shall be, and hereby are empowered to order, manage, improve, divide, or dispose of the same in such way and manner as shall be concluded and agreed upon by the major part of the interested present at any legal meeting, the votes to be collected and accounted according to the interest. And any proprietor may vote as well by attorney specially appointed for that purpose, as in person: And the proprietors of all such undivided lands and estate not stated, nor the proportions known as aforesaid, shall be, and hereby are empowered to order, manage, improve, divide or dispose of the same, as hath been or shall be concluded and agreed on by the ma-

Proprietors
may divide &
dispose of
their lands,
&c.

Proprietor
may vote by
attorney.

Saving as to
meetings hold-
en by adjourn-
ment.

After final di-
vision—last
proprietors to
continue a
corporation,
&c.

until their
debts are paid
and collected,

and be liable
to be sued as
before such
division,

—may call and
hold meetings
and transact
business—

Provided they
shall not so
continue to act
more than ten
years.

Proprietors
may avail
themselves of
statute of limi-
tations.

Clerk last
chosen to con-
tinue in office
until records
are lodged
with town
clerk.

for part in number of such proprietors present at any such meeting: *Provided always*, That the meetings of proprietors that may be notified, or which may hereafter be held by adjournment or adjournments agreeable to former laws, shall not be affected by the passing of this Act: But such meetings and the transactions regularly made thereat shall be as valid to every intent and purpose as though this Act had never been made.

SEC. 7. *Be it further enacted*, That notwithstanding the final division of any lands, wharves or other real estate lying in common, and which had been, or shall have been held and improved as a proprietary, the last proprietors or holders in common, shall continue in their corporate capacity, until all debts and taxes due, to such proprietary, are collected and received, and until all their contracts and agreements, made prior to such final division, shall be performed; and are and shall be liable and capable, in and by the same name and capacity as before such division, to sue and be sued, and by their agents to pursue and defend, in all matters and demands respecting such proprietary, until final judgment and execution; and shall and may call and hold meetings, and choose all necessary officers, and may vote, assess, levy and collect all reasonable rates and assessments, in like manner, form and proportion as before such division such proprietary could or might have done: *Provided nevertheless*, That the proprietors aforesaid shall not continue to act in their corporate capacity for more than ten years after the final division of their lands or other real estate; nor shall any suit brought against them be sustained, unless commenced within six years from the time such right of action shall accrue; any thing in this Act to the contrary notwithstanding.

SEC. 8. *Be it further enacted*, That the last clerk chosen by the proprietors of any common and undivided land, or other real estate in this State who are or have been, or may hereafter be empowered by law to hold meetings, choose a clerk and other officers, shall continue to execute the office of clerk to which he was appointed, notwithstanding the final and total division of such lands and estate, as fully, to all intents, constructions and purposes whatsoever, as though there

had been no such division made, and until the same records shall be lodged with the clerk of the town in which the land lies; and when the lands lie in several towns, they may be lodged with the clerk of such town, as the Court of Sessions, upon application to them made for that purpose, shall order and direct; and the clerk with whom they may be lodged, and his successors in office shall be fully authorized to authenticate any copies therefrom, as from the records of the town of which he is clerk.

When lands lie in several towns, Court of Sessions to decide with what clerk they shall be lodged;

which clerk may certify copies thereof.

SEC. 9. *Be it further enacted*, That where, after such final division of any lands or other real estate, which have been or shall have been held as a proprietary, the proprietors making such division have ordered and delivered or shall order and deliver the record of their proprietary into the custody of the town clerk in which such land or other real estate, or part thereof, may lie; the proprietors who shall hold any meeting for the purpose before mentioned, may recall the said record, and may cause the clerk then appointed, and sworn, or the town clerk to whom such records, have been committed, to record all votes and proceedings which shall be had at any meeting as aforesaid and copies of the same may be certified as by law is provided for certifying any other part of such record.

Proprietors may in certain cases recall their records—and cause clerk to make a record of their proceedings.

[Approved March 15, 1821.]

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CHAPTER XLIV.

An Act for regulating Fences, and general and common Fields.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That in every town within this State, there shall be chosen annually by the inhabitants thereof, at the time of their meeting for the choice of town officers, two or more judicious and discreet freeholders, being inhabitants of the same town, to be Fence Viewers, to be sworn as other town officers are sworn, to the faithful discharge of the duties of their office.

Every town to choose annually two or more fence viewers.

SEC. 2. *Be it further enacted*, That all fences of four feet high, and in good repair, consisting of rails, timber, boards or stone walls; and also brooks, rivers, ponds, creeks,

What shall be considered as legal fences.

Occupants of adjoining inclosures to maintain partition fences.

Proceedings in case of neglect.

Party neglecting, to pay double the adjudged value,

and after one month, liable to suit and 12 per cent. interest.

Fence viewers to assign in writing the shares of partition fences each occupant is to repair.

ditches and hedges, or other matter or thing equivalent thereto, in the judgment of the Fence Viewers, within whose jurisdiction the same shall lie, shall be accounted legal and sufficient fences ; and the respective occupants of lands inclosed with fence, shall keep up and maintain partition fences between their and the next adjoining inclosures, in equal halves, so long as both parties continue to improve the same ; and in case either party shall neglect or refuse to repair or rebuild the fence, which of right he ought to maintain, the aggrieved party may forthwith apply to two or more Fence Viewers of such town, duly chosen and sworn, to survey the same ; and upon their determination that the fence is insufficient, they shall signify the same in writing, to the occupant of the land, and direct him to repair or rebuild the same within six days ; and if the same fence shall not be repaired or rebuilt within the said term of six days, it shall be lawful for the complainant, that improves the lands adjoining, to make up, amend or repair the deficiency ; and when the same shall be completed and adjudged sufficient by two or more of the Fence Viewers, and the value thereof, together with the Fence Viewers' fees ascertained in writing, the complainant shall have a right to demand and receive of the occupant, lessor or freeholder of the land where the fence was deficient, as aforesaid, at his election, double the sum thus ascertained as aforesaid, for the expense of amending, surveying and viewing the fence ; and in case of neglect or refusal to make payment thereof, for the space of one calendar month after demand made of the person against whom he shall make his election, he may sue for and recover the same, by a special action of the case in any Court proper to try the same, and interest, one per cent. per month until judgment shall be rendered therefor.

SEC. 3. *Be it further enacted,* That when any dispute shall arise about the respective occupants' right in partition fences, and his or their obligation to maintain the same, upon application made by either party to two or more Fence Viewers of such town where the lands lie, they are hereby empowered, after due notice to each party, to attend at time and place, if they see cause, to assign to each party his

share thereof, in writing : which assignment, being recorded in the Town Clerk's office, shall be binding upon such persons and the succeeding occupiers of the respective lands, and they obliged always thereafter to maintain their part of said fence; and in case any of the parties shall refuse, or neglect to erect, keep up and maintain the part to such party assigned, the same may be done by the aggrieved party, in the manner before in this Act provided, and for which he shall be entitled to double the sum ascertained, in manner as aforesaid, and to be recovered in like manner. And all divisional fences between man and man shall be kept in good repair throughout the year, unless the occupiers of the lands on both sides shall otherwise agree.

Assignment to be recorded.

Proceedings in case of refusal to build or repair.

Divisional fences to be kept in good repair unless otherwise agreed.

Sec. 4. *Be it further enacted,* That when lands belonging to, or occupied by different persons, and subject to be fenced, are bounded upon, or divided from each other by any brook, pond or creek, which of itself is not a sufficient fence in the judgment of the Fence Viewers, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in the middle or other part thereof, being the true boundary line between them ; if, in such case, the occupant of the land on one side shall refuse or neglect to join with the occupant of the land on the other side, in making a partition fence on one side or the other, or shall disagree respecting the same, then two or more Fence Viewers of the town or towns wherein such lands lie, on application to them made, shall forthwith view such brook, river, pond or creek ; and, if they shall determine the same not to answer the purpose of a sufficient fence, and that it is impracticable to fence at the true boundary line ; they shall judge and determine how, or on which side thereof the fence shall be set up and maintained, or whether partly on one side and partly on the other side, as to them shall appear just, and reduce such their determination to writing, having first given notice to the parties to be present at such assignment : and if either of the parties shall refuse or neglect to make up and maintain the part of the fence to such party belonging, according to the Fence Viewers' determination in writing, as aforesaid, the same may be done and performed, as in this Act is before provided, and the delin-

Fence viewers to decide in writing how or on which side of a stream a divisional fence shall be built.

Proceedings in case of neglect to build fence accordingly.

quent party subject to the same costs and charges to be recovered in like manner.

When persons owning in severalty have improved in common, and one wishes to improve in severalty what proceedings are to be had.

SEC. 5. *Be it further enacted*, That where any lands' belonging to two persons in severalty, shall have been improved in common, without a partition fence between them, and one of the occupants shall be desirous to improve his part in severalty, and the other occupant shall refuse or neglect, on demand, to divide the line where the fence ought to be built, or to build a sufficient fence on his part of the line when divided, it shall be in the power of the party desiring it, to have the same divided and assigned by two or more of the Fence Viewers of the same town, in the way and manner in this Act provided; and the same Fence Viewers may, in writing, assign a reasonable time, having regard to the season of the year, for making up the fence; and if the occupant complained of shall not build and erect his part of the fence within the time so assigned, it shall and may be lawful for the other party, after having made up his own part of the fence, to make up the other's part, and recover therefor double the sum it shall cost, with the fees of the Fence Viewers, in the way and manner in this Act before provided.

When one party shall cease to improve his land, before under improvement, and lay it in common—the partition fence shall remain, on payment of value, &c. by the owner of the adjoining inclosure.

When lands which have laid unimproved and in common shall be inclosed or improved—proceedings to be had.

SEC. 6. *Be it further enacted*, That when one party shall cease to improve his land, or shall lay his inclosure, before under improvement, in common, he shall not have a right to take away any part of the partition fence that to him belongs, adjoining to the next inclosure that is improved: *Provided*, The party continuing to improve will allow and pay therefor, so much as two or more Fence Viewers shall, in writing determine the reasonable value thereof. And whenever any lands which have laid unimproved and in common, shall be afterwards inclosed or improved by depasturing, the occupant, lessor or freeholder thereof shall pay for the one half of each partition fence standing upon the divisional line between the same land and the land of the inclosures of any other occupant or proprietor, the value and part thereof to be ascertained, in writing, in case they shall not agree between themselves, by two or more of the Fence Viewers of the same town wherein such land lies; and in case such occupant, lessor or proprietor as aforesaid,

shall neglect or refuse to pay for a moiety of the partition fences, for the space of thirty days after demand made, the value having been ascertained as aforesaid, the proprietor of the fence may have and maintain in form aforesaid, an action of the case for such value and the costs of ascertaining the same. And in all cases where the line upon which partition fence is to be made or divided is the boundary line of one or more towns, or partly in one town and partly in another town, a Fence Viewer shall be taken from each town.

Where towns' lines, &c. are boundaries, a fence viewer to be taken from each town.

Sac. 7. *Be it further enacted,* That when a water fence, or fence running into the water is necessary to be made, the same shall be done in equal halves, unless by the parties otherwise agreed: and in case either party shall refuse or neglect to make or maintain the share to such party belonging, similar proceedings shall be had, as in other cases of the like kind respecting fences out of the water, in this Act mentioned: *Provided,* That nothing in this Act contained shall extend to house lots, the contents of which do not exceed half an acre; but if the owner or owners of such lots shall improve, his neighbour shall be compellable to make and maintain one half of the fence between them, whether he improve or not; or to make void any written agreement respecting the making or maintaining partition fences.

Water fences to be maintained equally by parties.

Proceedings in case of neglect.

Proviso as to house lots not exceeding half an acre.

Sac. 8. *Be it further enacted,* That any Fence Viewer duly chosen and sworn, who, on due notice given him and being requested by any person interested to view any fence complained of, as insufficient, shall neglect forthwith to attend the same, shall forfeit and pay the sum of three dollars, to him or them who shall sue for the same, within forty days after such neglect, and each Fence Viewer shall be paid one dollar a day, fifty cents for half a day, and under that twenty five cents, for the time he shall be engaged in the business of his office, by the person employing him. And in case the complainant shall neglect to pay the Fence Viewers their legal fees, within thirty days after the service done, they may severally recover, by an action of the case, double the amount of such fees; and each Fence Viewer may be a witness for or against his companion in such suit.

Penalty if fence viewers neglect their duty.

Sac. 9. *Be it further enacted,* That in any and every

Proprietors of general and

common fields may have annual meetings in March, and agree on mode of improving, &c.

Each proprietor's proportion of a general fence being determined, to be recorded.

Expense to be borne by proprietors in proportion to their interest, &c.

Proceedings whenever fence round a common field belonging to any occupant, &c. is deficient, &c.

town or plantation in this State, where several allotments of lands are inclosed and fenced in one general field, or where they have been so inclosed, fenced and improved, or where all the proprietors of any land shall hereafter see cause to inclose, fence and improve the same in such manner, such proprietors may, some time in March, annually, and from time to time, as they judge proper, meet together to make such rules and adopt such modes of improvement, as they shall think just and equitable and most for the general benefit; and the proprietor or proprietors of each lot respectively, during the time of his or their pasturing, planting, mowing or otherwise improving his or their part in such general field, shall make and maintain his or their respective part of the whole fence, according to the quantity of acres of land contained in his or their allotment, until the major part of the propriety, at a meeting of such proprietors legally warned for that purpose, shall see cause to alter the form of their improvement. And the whole general fence shall be measured, and each proprietor's part set out and apportioned by two or three discreet indifferent persons, appointed and sworn for that purpose, by any Justice of the Peace for the said county, unless the major part of the propriety agree, and proportion the same among themselves. And when the proportion of each proprietor in such general fence is adjusted and determined, the same shall be entered upon record by the Clerk of the propriety; and where there is no such Clerk, by the Clerk of the town wherein the land lies, any law, usage or custom to the contrary notwithstanding. And the charge arising by dividing and setting off the several parts of such fence, to and among the proprietors of lands inclosed and fenced in one general field, and also the charge of making and maintaining of such fence, as cannot justly be set off to any particular proprietor or proprietors, as his or their part, shall be borne by the several proprietors, in proportion to their respective interests in such field.

SEC. 10. *Be it further enacted*, That whenever the fence around any general and common field, belonging to any freeholder, occupant, or improver of any land in such field, shall become deficient and need repairing, the owner thereof shall immediately repair such defective fence, after being duly no-

ified of such deficiency by any Fence Viewer of the town wherein such field lieth ; and in case the owner thereof shall neglect to repair such defective fence, for the space of three days, after due notice given thereof by any Fence Viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands in such fields, to repair such defective fence ; and when the same shall be completed and adjudged sufficient, by two or more of the Fence Viewers of the town wherein such fence lieth, and the value thereof, together with the Fence Viewers' fees, ascertained in writing, by them subscribed, the person who shall make up or repair such deficient fence, shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up or repair the same, at his election, double the expense of making or repairing, surveying and viewing, such fence ; and in case of neglect or refusal to make payment thereof for the space of one month, after notice and demand made of the person against whom he shall make his election, to satisfy him therefor, he may sue for and recover the same by a special action of the case, with cost of suit, in any Court proper to try the same. And whereas it often happens that fences around general and common fields are blown down, carried away, or otherwise destroyed by sudden floods or tempests, and it is necessary the same should be immediately repaired to prevent the destruction of the grain and crops growing therein :

SEC. 11. *Be it therefore enacted*, That whenever any such fence shall be thus suddenly blown down, carried away, or destroyed, and the crops of grain or grass therein growing, shall be thereby exposed to be immediately destroyed, the occupant or freeholder of the same, to whom the same fence belonged to repair, shall immediately repair the same ; and in case of neglect for the space of twenty four hours, after notice given him thereof by any Fence Viewer as aforesaid, it shall and may be lawful for any freeholder or occupier of any lands in such fields, to set up and sufficiently repair such fence ; and when the same shall be completed and adjudged sufficient by two Fence Viewers or more, as aforesaid, and the value thereof, together with the Fence Viewers' fees, ascertained in writing as aforesaid, the person who

Proceedings
when fences
round common
fields are
blown down,
&c.

shall set up or repair the same, shall have right to demand and receive of the occupier, lessor or freeholder of the land, who ought to make up and repair such fence, at his election, double the sum thus ascertained as aforesaid, for the expense of setting up, repairing, surveying and viewing the same; and in case of neglect or refusal to make payment thereof, for the space of one month as aforesaid, after demand made of the person against whom he shall make his election to receive the same, he may sue for and recover the same, with costs of suit, in manner as is before directed.

Any person owning lands in a general field, may inclose the same at his own expense,

provided he must maintain his share of the general fence.

Mode of calling meetings of proprietors of general fields.

SEC. 12. *Be it further enacted*, That any person now owning, or who may hereafter own any lands lying within the limits of any general and common field within this State, shall have the right to inclose his own land, at his own expense; and at all seasons of the year, to have the exclusive and separate right of using and improving his own land so inclosed with a good and sufficient fence: *Provided*, That such proprietor shall be held to maintain his proportion of the general fence around said field.

SEC. 13. *Be it further enacted*, That for the better enabling such proprietors to call a meeting for the ends aforesaid, it shall be in the power of any Justice of the Peace for the county where such lands lie, upon application to him made by any two of the proprietors of such general fields, to issue out a warrant for such meeting; which warrant, and also the notification of the meeting, shall express the business thereof, and shall be directed to one of the proprietors asking the same, or to the proprietors' Clerk, requiring him to notify the proprietors of the meeting, and the time, place and occasion of the same; which notification, in case such field lies in any incorporated town, shall be given in writing to each proprietor therein, or posted up in some public place or places within such town, fourteen days, at least, before the day appointed for such meeting, or in case any of the proprietors do not reside in said town, the notification shall, for the like time be advertised in any two of the Portland newspapers, and in one other newspaper (if such there be) printed in the county where such estate lies, at least four weeks successively before such meeting; or such meetings may be otherwise warned by posting up written notifications

in some public place in each and every town and plantation where any one or more of the said proprietors may reside, fourteen days at least before the time appointed for holding such meeting.

Sec. 14. *Be it further enacted*, That the proprietors of such general fields respectively shall be and are hereby fully authorized and empowered, in a proprietors' meeting for that purpose regularly convened, by a major vote of the proprietors then present, (the votes to be collected according to the interest of the proprietors) to agree upon and pass one or more votes for the raising and collecting such sum or sums of money from time to time, as they shall judge necessary for defraying the charges aforesaid, and for carrying on, or managing any common affairs relating to such proprietors; and that they be alike empowered to choose three or five assessors for the assessing and apportioning such sum or sums so agreed on, and voted upon the proprietors of such fields, according to their several interests therein; and to appoint a collector or collectors to gather in and collect the same; which collector or collectors shall be, and are hereby fully empowered to levy and collect the sum or sums, so set and apportioned for such proprietors to pay, in the same manner as constables of towns within this State are empowered to levy and collect the public rates or taxes; and to pay in the same to the proprietors or their Clerk, who is hereby empowered to grant warrants, for the levying and collecting such assessment at such time as shall be by them appointed for the payment thereof: and such Clerk shall be accountable to the proprietors therefor; the person or persons so assessing the said proprietors, and the collector or collectors that shall be so appointed for the gathering and collecting the sum or sums so granted and agreed upon by the said proprietors to be assessed and collected as aforesaid, shall be under oath for the true and faithful performance of their services respectively; which oath shall be administered to them as the law provides for swearing town officers: *Provided nevertheless*, That any such proprietor, who apprehends himself aggrieved, or overrated in the making or apportioning such assessment, shall have liberty to apply to the Justices of the Court of Sessions in the respective counties, where such

Proprietors at such meetings may raise money, elect officers, &c. for assessing and collecting monies.

fields lie, for relief; and in such case the said Justices are hereby fully empowered to grant relief accordingly; and their judgment shall be final.

May choose
hay wards and
field drivers—
who are to be
sworn.

SEC. 15. *Be it further enacted,* That the proprietors aforesaid, or the major part of such of them as shall be present at a meeting legally warned for that purpose may choose Hay Wards or Field Drivers, who shall be under oath, and shall have the same powers as if they had been chosen by a town.

Penalty for
putting cattle
&c. into such
fields, before
the time ap-
pointed; or
more than
their propor-
tion.

SEC. 16. *Be it further enacted,* That if any proprietor in any common or general field shall put, or cause to be put therein any horse, cattle, sheep or other creature, over and above the number allowed him, or before the day agreed upon; or keep them longer there than the time set and limited by a major vote of the proprietors, he shall be deemed a trespasser; and his creatures so put in shall be proceeded with by any of the proprietors as creatures taken damage feasant, to all intents and purposes, as much as if he owned no land within such general field.

Mode of esti-
mating dam-
ages done, or
trespasses, &c.

SEC. 17. *Be it further enacted,* That when and so often as any trespass or trespasses, shall be done in any common or general field, by reason of the insufficiency of the fence belonging to any person owning the adjoining land, the party or parties injured shall forthwith procure two sufficient persons of good repute to view and adjudge of the damage done, giving notice of such trespass to the owner or claimer of the horse, cattle, sheep or other creature, that did the same (if he be known and resident in the same town, or near thereto) that he may be present, and nominate one of the appraisers of such damage, if he see cause: and the damage shall be answered according to such appointment. And where damage happens through the insufficiency of the fence, the owner or occupant of the land to which the defective fence belongs, shall be liable to answer and make good all such damage.

Lines to be run
and bounda-
ries marked
once in 2 years.

SEC. 18. *Be it further enacted,* That each proprietor of lands lying unfenced, or in any common field, shall, once in two years, on six or more days warning, previously given him by the proprietor or proprietors of the land next ad-

joining, run the lines, and make or keep up the boundaries between their respective lands, by sufficient mete stones, on pain that every party so neglecting or refusing shall forfeit the sum of two dollars to the party moving or requesting to run the line; the conviction of such neglect or refusal being had before any Justice of the Peace within the same county who is hereby empowered to hear and determine the case.

Penalty for neglect.

SEC. 19. *Be it further enacted*, That it shall and may be lawful to and for the proprietors who own the major part of the interest or property in any common or general field, at a legal meeting to be warned for that purpose, to dissolve and discontinue such field; six months being allowed to elapse before such discontinuation.

Major part of proprietors may dissolve and discontinue such common and general field.

SEC. 20. *Provided always, and be it further enacted*, That nothing contained in this Act shall prevent or hinder the proprietors of any such common field already fenced, from making and maintaining their fences according to rules and orders formerly agreed on by them at any meeting legally warned.

Provision for common fields under existing rules and orders.

SEC. 21. *Be it further enacted*, That at every meeting of such proprietors the votes shall, by the Moderator, be collected and counted according to the interests of the proprietors present, where such interests are known. And whereas it often happens that horses, cattle, and other creatures are clandestinely turned into general fields, or, being unruly, break into the same in places where the fence is good and sufficient according to law; and when, in such cases, proprietors of general fields, impound horses, cattle, or other creatures, the owners replevy them because the fence inclosing the general field is deficient in some distant place from that where the horses, cattle or other creature entered the same, and in consideration of such deficiency judgment is unreasonably recovered against such proprietors:

Proprietors to vote in their meetings according to their interest.

SEC. 22. *Be it therefore further enacted*, That whenever horses; cattle or other creatures, shall be clandestinely turned into any general field, or, being unruly, break into the same, and shall be taken and impounded by a proprietor thereof and a writ of replevin shall be purchased by the owner of the horses, cattle or other creatures so impounded,

Damages may be recovered if cattle are clandestinely turned in, or break in where the fence is good—although other parts of

the fence be
deficient.

for the purpose of replevying them, it shall be in the power of the Court or Justice, before whom the action shall be brought, to give judgment in favour of the proprietor of the general field, upon his producing satisfactory evidence to the said Court or Justice, that the horses, cattle or other creatures replevied as aforesaid, were either clandestinely turned into the general field, or broke into the same in a part thereof, where the fence was good and sufficient according to law, some other parts of the fence inclosing the general field being deficient, notwithstanding: And whereas it often happens in fencing general fields, for the convenience of fencing considerable quantities of rocky and barren land not capable of tillage, are taken into such fields, the owners of which may be obliged to make fence, and also pay taxes equally with the other proprietors whenever an assessment is made by the proprietors of such field; which is very unjust:

Barren and
Rocky lands
to be excluded
in estimating
expenses of
fences, and
from taxes.

Sec. 23. *Be it therefore further enacted,* That all lands now lying in general fields, or that hereafter, may be taken into the same, that are so rocky or barren that the owners thereof have never improved them, either by mowing, ploughing, or feeding, such owners shall not be obliged to make, on account of such lands, any part of the fence in compassing such general fields; nor shall they be taxed for them in any rate or tax, raised by the proprietors of such field, until they shall make improvement thereon. And whereas the major part of the owners or proprietors of common fields, in some instances, have been and may be desirous of a partition of such field into two or more distinct fields, from a persuasion that their shares or lots might (if separated and fenced off from the rest) be improved much more to their advantage, in some manner different from that agreed on by the majority: To the end therefore that such of the owners as are or may be so minded, may not be unreasonably restrained by the rest from having such partition:

When 3 or
more owners
in general field
wish to im-
prove their lots
separate from
the general

Sec. 24. *Be it enacted,* That when any three or more of the owners or proprietors of lots in any common or general field, lying within one general fence or inclosure, shall make application, in writing, under their hands to the proprietors of such field, (at any meeting legally warned for

that purpose) to have the lots or shares of the owners or proprietors so applying, or theirs with other lots or shares (taken together) to make one entire field, to be separated from the rest by one common fence, and to be improved as a distinct and separate, but common field; in such case, if the proprietors, who have the greater part of the interest among those who are present at such meeting, shall withhold or refuse their assent to such division or partition, it shall and may be lawful for the Justices of the Court of Sessions for the said county, upon application made to them, to appoint a committee of five freeholders within the said county (under oath) to make the partition prayed for, if it shall appear to such committee to be expedient, and to assign to each field its part or proportion of the divisional fence in consequence of such partition, to be made, kept up and maintained by the proprietors of the respective common fields; and the return being made under the hands of the major part of such committee, and accepted by the said Court of Sessions, the fields so separated shall be considered as distinct and separate common fields, and the owners or proprietors of each field a distinct and separate property, as fully to all intents and purposes whatsoever, as the owners or proprietors of such general field were considered before such partition was made: *Provided*, That no order for partition be made, or committee appointed, until the rest of the proprietors have been duly notified of such application, and opportunity given them to make their objections thereunto; which notice shall be given by serving the Clerk of such proprietors with a copy of such written application, thirty days at least before such order or appointment be made; and every committee that shall be appointed and employed as aforesaid, shall make return of their doings, in writing, under their hands, unto the said Court, as soon after as may be, for acceptance and confirmation: and the proprietors, whose interest shall be so set off, as well as the remaining proprietors, shall have and enjoy all the powers and privileges which the proprietors of general fields are by law vested with.

~~And pro-~~
ceedings in
such cases.

Case of pro-
prietors refus-
ing.

Court of Ses-
sions to ap-
point a Com-
mittee to make
partition.

Proviso for no-
tice to the pro-
prietors.

SEC. 25. *Be it further enacted*, That when the major part, in interest, of the proprietors of any tract of land, consisting

When major
part of the
proprietors of

a tract of land, consisting of several allotments, wish to inclose the whole in a general field—what proceedings are to be had.

of several allotments, shall be desirous of inclosing, fencing and improving the same in one general field, they may apply to the Circuit Court of Common Pleas in the county where such land lies; and when such land lies in different counties, then to the Supreme Judicial Court to be holden in either; and on such application the said Court shall notify the proprietors concerned in said land to appear at the same Court, at the same or the next term thereof, in such manner and form as the Court shall judge proper; and if on hearing the said proprietors, it shall be deemed for their general benefit by the said Court, they shall decide that such land shall be fenced, inclosed and improved in one general field; and after such tract of land shall be so established as a general field, the first meeting of the proprietors may be called, on application to a Justice of the Peace, in the manner provided by this Act, at any time in the year; and at such first meeting, the proprietors of such field may agree upon the manner of calling and notifying future meetings, as well the annual as special meetings, of such proprietors; and such proprietors shall be entitled to all the rights and privileges, and subject to all the duties, to which proprietors of general and common fields are.

[Approved February 24, 1821.]

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CHAPTER XLV.

An Act for the support and regulation of Mills.

Owners of water mills built on their own land, &c. may raise a sufficient head of water, paying damages, &c.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That where any person hath already erected, or shall erect any water mill, on his own land, or on the land of any other person, by his consent legally obtained, and to the working of such mill it shall be found necessary to raise a suitable head of water; and in so doing any lands shall be flowed not belonging to the owner of such mill, it shall be lawful for the owner or occupant of such mill to continue the same head of water to his best advantage, in the manner and on the terms herein after mentioned.

SEC. 2. *Be it further enacted,* That if any person shall sustain damages in his lands by their being flowed as aforesaid, he may complain to the Circuit Court of Common Pleas of the county wherein the lands so flowed, shall be situated; and the said Court shall order the complainant to notify the owner or occupant of the mill complained of, by serving him an attested copy of such complaint, (together with such order thereon) fourteen days at least before the then next term of said Court, that he may then appear and show cause, if any he have, why a warrant should not issue in the manner, and for the purposes prayed for in such complaint; or such complainant, may fourteen days at least before the sitting of the Court, to which he intends to prefer his complaint, cause the owner or occupant of such mill to be served with an attested copy of such complaint.—And such service or notification, certified by the proper officer, shall be deemed sufficient evidence of proper notice.

Person injured by the flowing of his lands may complain to C. C. Com. Pleas.

Court to order notice to owner of mill to appear at next term—

or complainant may 14 days before Court, cause owner to be notified.

Mode of notifying.

SEC. 3. *Be it further enacted,* That if any owner or occupant of any mill shall plead to such complaint, and in his plea shall deny the complainant's title to the lands said to be damaged by flowing, or shall claim a right to flow such lands without payment of damages, or for an agreed composition; the Court shall order a trial of the issue which may be joined by the parties, by a jury at the bar of said Court; or if the issue be an issue in law, shall determine the same themselves, reserving to each party the liberty of appealing to the Supreme Judicial Court, as in other cases.

If certain facts stated in the complaint be disputed—trial to be had in Court.

SEC. 4. *Be it further enacted,* That if the owner or occupant of a mill, notified as aforesaid, shall not appear, or appearing shall not show sufficient cause, the Court in which said complaint may be pending as aforesaid, may issue a warrant to the Sheriff of the same county, or either of his Deputies directing him to empanel a jury of twelve good and lawful men; and the officer to whom the warrant shall be directed, shall in writing require of the Selectmen of the three towns nearest to that in which the land injured is situated, if so many there be within the same county, to return a number of jurors (not less than two, nor more than six from any one town,) to serve on the pannel; which jurors shall be drawn from the jury box, notified and returned as

On default or trial, Court may issue a warrant to Sheriff to empanel a Jury.

Mode of proceeding to select and empanel the Jury—

in other cases; excepting that the town need not be assembled, and that notice to the persons drawn, one day previous to the time appointed for their attendance shall be sufficient; and if any person so returned shall unnecessarily fail to attend, he shall forfeit and pay a sum, not exceeding ten dollars, at the discretion of the Court to whom the verdict shall be returned, to be divided among the jurors who do attend; and if, from accident or challenge there shall not be a full jury, the officer shall return some suitable person or persons to supply the deficiency; which jury shall be sworn to make a true and faithful appraisement of the yearly damages done to the complainant by so flowing his lands, and how far the same may be necessary. And said jury shall try the cause; and their verdict being returned by the officer to the same Court, and there allowed and recorded, shall be a sufficient bar to any action to be brought for any such damages. And if said jury shall find, and so return in their verdict, that no damage is done to the complainant by flowing his land, as aforesaid, the respondent shall recover his costs. And when the said jury shall so inquire of the said yearly damages, they shall also inquire and make return, in their said verdict, what portion of the year the said lands ought not to be so flowed; and during such portion of the year as the said jury shall certify in their verdict, that the public convenience and the circumstances of the case do not justify such flowing; and the said verdict being accepted by the Court, this Act shall in no manner authorize the said owner or occupant of such mill so to flow the said lands of others. And it shall be in the power of said Court to assess such sum to the officer for his services, as they may judge reasonable.

Sec. 5. *Be it further enacted,* That the parties to said complaint may agree upon a committee of three persons, to be appointed by the Court in which said complaint may be pending; which committee after giving seasonable notice to the parties, of the time and place of meeting, shall have the same powers and be sworn in the same manner, as the jurors aforesaid. And said committee shall make their report in the same manner, as the said jury are required to make their verdict; and the said report being returned to the same

penalty for non attendance of jurors.

Officer may return talesmen, in case—

Jury to be sworn

Duty of the jury and effect of their verdict.

Facts which they are to certify in their verdict.

Verdict to be accepted by the Court.

Parties may agree on a committee instead of a jury,

with the same powers, &c.

and same proceedings to be had.

Court, and there allowed and recorded, shall have the same effect as the verdict aforesaid.

SEC. 6. *Be it further enacted,* That such verdict or report and judgment thereon so recorded, shall be the measure of the yearly damages, until the owner or occupant of such mill, or the owner or occupant of such lands so flowed, shall on a new complaint to the said Court of the county, and by the form of process before prescribed, obtain an increase or decrease of the said damages. And the party entitled to pay such yearly damages, whether the party to the record, his heirs, executors, administrators, or assigns may have an action of debt, grounded on such record, to recover the same. And the party prevailing in any complaint or action aforesaid, shall be allowed his full legal costs, though the damages so assessed or debt recovered shall not amount to the sum of twenty dollars.

Such verdict or report and judgment to be the measure of yearly damages till altered, on a new complaint.

Who may have an action of debt for such damages.

Costs, how taxed.

SEC. 7. *Be it further enacted,* That if any person, whose lands shall be flowed as aforesaid, shall, on his filing his complaint for ascertaining or increasing his damages, or on bringing his action of debt as aforesaid, move the said Court to direct the owner or occupant of such mill to give security for the payment of the said damages from time to time, as they shall become due; and in that case, the said owner or occupant of such mill shall neglect or refuse to give such reasonable security as the said Court shall order, he shall have no benefit of this Act, but shall be liable to be sued for so flowing the lands of the complainant or plaintiff, in the same manner as though this Act had not been passed.

If, on motion of party injured, owner of mill will not give security for such damages, he is to have no benefit of this Act.

SEC. 8. *Be it further enacted,* That if the complainant shall fail to prosecute his complaint, in any stage of the proceedings, or the issue joined shall be determined against him, the respondent shall recover his costs as in other cases.

Costs for respondent when prevailing.

SEC. 9. *Be it further enacted,* That the owner or occupant of any mill dam may tender to the owner or occupant of such lands as may be flowed by the erection of such mill dam, any sum of money instead of the yearly damages he may be entitled to receive from the owner or occupant of such mill dam, by virtue of this Act, within one month after the past year's damages shall have become due. And if

Owner of mill may make a tender of yearly damages, &c. effect thereof.

the owner or occupant of such lands shall not accept the same, but shall present a new complaint to obtain an increase of said damages, he shall not be entitled to costs thereon unless he shall obtain an increase of the sum so tendered.

Owner of
lands flowed
may also offer
to receive less
than yearly
damages es-
tablished,

effect of such
offer.

SEC. 10. *Be it further enacted,* That the owner or occupant of lands so flowed, may also offer the owner or occupant of such mill dam, to receive of him any proportion of the sum established as his yearly damages, by reason of the said flowing, within one month after the past year's damages shall have become due. And if the owner or occupant of such mill dam shall not agree to the same, but shall present a complaint to obtain a decrease of said damages, he shall not be entitled to costs thereon, unless he shall obtain a sum to be by him paid, as damages, less than the sum which the owner or occupant of such lands offered to receive of him.

Limitation of
complaint for
increase or
decrease of
damages.

SEC. 11. *Be it further enacted,* That no complaint shall be presented for an increase or decrease of said yearly damages, until the expiration of one month after the same shall have become due.

Meetings of
mill proprie-
tors how to be
called.

SEC. 12. *Be it further enacted,* That when any mill, worked by wind or water, the under works or appurtenances thereof shall want repairs, or to be rebuilt, in whole or in part, in the opinion of the major part in interest, of the proprietors; it shall be lawful for any one or more of the proprietors thereof to call a meeting of the whole, at said mill, to consult and agree about repairing or rebuilding the same, in whole or in part; which notice to the said proprietors may be in substance as follows, to wit:

Form of no-
tice.

To A. B. of _____ in the county of _____ addi-
tion _____ Greeting.

You are hereby notified, that our mill in _____ wants repairs, or to be rebuilt, in order that the same may be of use to the concerned; and a meeting of the proprietors thereof will be held at the same mill, on the _____ day of _____ at _____ o'clock in the _____ noon, when and where your attendance is requested. Dated at _____ on _____ Which notification, signed by one or more of the proprietors, or a true copy thereof given to any other proprietor, or left

at his place of last and usual abode not more than thirty, nor less than ten days, before the day of the said meeting, shall be deemed sufficient notice, and may be proved by the testimony of any disinterested witness, who gave or left the same, or saw it done.

SEC. 13. *Be it further enacted*, That if any proprietor so notified shall neglect to attend the said meeting; or being met shall neglect or refuse to agree with the major part in interest, of the proprietors of such mill, for repairing or rebuilding the same, in whole or part, so as to make the same serviceable, to pay his part of the charges of doing the same; the rest of the proprietors, being the major part in interest, may cause the same to be done; and shall be reimbursed and paid such sum or sums as they, or any of them, shall advance thereon beyond their respective proportions, with interest for the same in the mean time, out of the said mill or the profits thereof; and if said sums so advanced shall not be reimbursed or paid by the profits of said mill, or by the proprietors neglecting and refusing as aforesaid, within six months after the said repairs and buildings shall be completed, it shall be lawful for the proprietors so advancing said sums, to charge, in addition to the same, one per centum a month on the amount so advanced, from and after said six months, till the same shall be reimbursed or paid as aforesaid; and their lien on such mill for the purpose of being reimbursed such repairs, shall continue notwithstanding the proprietor so neglecting or refusing, may decease, or may alien their interest in such mill: *Provided*, That nothing in this Act contained shall be construed to make void any particular contract, made or to be made, for the repairing or rebuilding any mill or mills.

After notice the majority may proceed to rebuild or repair,

and shall be reimbursed out of mill profits;

if not so reimbursed or paid—what proceedings shall be had.

Proviso—this act not to affect special contracts as to such mills.

SEC. 14. *Be it further enacted*, That where any part or parts of such mill, shall at the time of such notice and meeting, be held and possessed by any minors, feme covert, tenant for years, in dower, by courtesy, for life, in tail, mortgager or mortgagee; then the guardians of such minors legally appointed, husband of such feme covert in her right, such tenant, mortgager or mortgagee in possession, shall be deemed, for all the purposes of this Act in so repairing or rebuilding such mill, the proprietor or proprietors thereof,

Guardians, husbands and mortgagees, in certain cases to be considered as owners, within this act, and notified accordingly.

and such guardians, husbands and persons having in possession such limited estates therein, shall be notified, vote and contribute accordingly; and all advances so made by them respectively, for and on account of such minors, heirs of such married woman, those in remainder or reversion, or the other party in the mortgage, if not adjusted and paid by agreement, shall be recoverable in a special action on the case, with interest.

Millers to be provided with scales and weights.

SEC. 15. *Be it further enacted*, That every miller shall be provided with scales and weights to weigh corn, grain and meal to and from the mill, if required; and if he shall neglect to keep such scales and weights, or refuse so to weigh corn, grain and meal, when required, he shall be fined for each neglect or refusal not exceeding five dollars, to be recovered, with costs by action of debt, by the party suing to his use, before any Justice of the Peace of the county wherein the offence shall be committed.

Amount of toll not to exceed one sixteenth.

SEC. 16. *Be it further enacted*, That the toll for grinding all sorts of grain shall not exceed one sixteenth part thereof.

[Approved February 8, 1821.]

CHAPTER XLVI.

An Act directing the manner of Conveyance to be used by Counties, in purchasing and disposing of Lands.

Deeds made to the inhabitants of a county, their successors and assigns to be good and valid.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That whenever any County in this State shall purchase any lands, whereon to erect a court-house, or jail, or for any other purposes authorized by law, the deed or deeds of the grantor or grantors duly executed, acknowledged, and registered, made to the inhabitants of the county, making the purchase, to have and to hold to the said inhabitants, their successors and assigns forever, shall be good and valid, to all intents and purposes, to vest in the said inhabitants and county their successors and assigns, in fee simple, all the right, title, interest and estate whatever which the grantor or grantors in such deed or deeds had, at the execution thereof, in the lands contained therein.

SEC. 2. *Be it further enacted*, That all grants and conveyances heretofore made to the inhabitants of any county, or to their Treasurer, committee, or any other person or persons, and by whatever form of conveyance for the use and benefit of such county in any manner whatever, shall be deemed and holden to be the property of such county; and all such conveyances shall have the same force and effect as if they had been made to the inhabitants of such counties by their respective corporate names.

Deeds of different forms for the benefit of counties confirmed.

SEC. 3. *Be it further enacted*, That the court which by law may have the powers in relation to county lands, may by their order of record, appoint an agent or agents, to sell and dispose of any real estate of said county, and the deed or deeds of such agent or agents under their proper hands and seals, for and in behalf of the inhabitants of such county, duly acknowledged and registered shall be sufficient to all intents and purposes to convey to the purchaser or purchasers, all the right, title, interest and estate whatever, which the county may then have to the premises so conveyed.

Certain courts may appoint agents to convey county lands, &c.

Their deeds valid to pass the estate.

SEC. 4. *Be it further enacted*, That in all cases where any real estate may be holden in trust, for the use and benefit of any county by any conveyance whatever, and no convenient and effectual remedy may exist at common law, to enforce the execution of such trust, the Supreme Judicial Court shall have full powers and process, and they are hereby empowered to enforce the execution of such trust, according to the course of proceedings in equity.

Sup. Judicial Court to exercise all necessary powers of Court of Equity, as to lands, &c. holden in trust, for, or to use of a county.

[Approved March 15, 1821.]



CHAPTER XLVII.

An Act for the settlement of certain equitable claims arising in Real Actions.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That when any action has been or may hereafter be commenced against any person for the recovery of any lands or tenements, holden by such person by virtue of a possession and improvement, and which the tenant or person, under whom he claims, has had

Jury in certain cases to ascertain the value of improvements and of the land without them.

Demandant
may abandon;
judgment and
execution in
such case.

Lien on the de-
manded prem-
ises.

in actual possession for the term of six years, or more, before the commencement of such action, the Jury, which try the same, if they find a verdict for the demandant, shall, (if the tenant so request) also inquire, and by their verdict ascertain the increased value of the premises, by virtue of the buildings and improvements made by such tenant, or those under whom he may claim; and (if the demandant require it) what would have been the value of the demanded premises, had no buildings or improvements been made by such tenant, or those under whom he may claim; and if during the term in which such verdict shall have been given, the demandant shall make his election on record, in open Court, to abandon the demanded premises to the tenant, at the price estimated by the Jury as aforesaid, then no judgment for possession shall be rendered on the verdict, but judgment for the sum so estimated; and after one year, a writ of execution may issue for the same sum with one year's interest thereon and costs of suit, unless the tenant shall, within one year after the rendition of said judgment, pay into the Clerk's office of said Court, for the use of the demandant, one year's interest of the said sum, together with one third part of the said sum, and the costs of suit, if taxed, in which case the said writ of execution shall further stay; and if the tenant shall within two years after the rendition of said judgment further pay into the Clerk's office as aforesaid, one year's interest of two third parts of the said sum, together with one other third part of the said sum, then the said writ of execution shall further stay: otherwise may issue for two third parts of the said sum, and one year's interest thereon; and if the tenant shall within three years after the rendition of said judgment, pay into the Clerk's office as aforesaid, the remaining third part of the said sum, and one year's interest thereon, having made the several payments aforesaid, the writ of execution shall be perpetually stayed, otherwise it may issue for the said one third part of the said sum and one year's interest thereon; and the said demanded premises shall be held for the security of the sum so estimated, and interest thereon, and costs of suit, until sixty days after a writ of execution might have issued as aforesaid, liable to be taken in execution, in like

manner as real estate or equities of redemption attached on mesne process, notwithstanding any intermediate conveyance, attachment or seizure upon execution, and the demandant may cause his writ of execution, when issued as aforesaid, to be extended on the said premises, in like manner and with like effect in all respects, as executions may by law be extended on real estate; or he may cause the same premises, or so much thereof as will satisfy said execution and costs, to be taken and sold upon the said execution in like manner and with like effect in all respects as equities of redemption may by law be taken and sold on execution; and the tenant and his heirs shall have a good title to the demanded premises, against the demandant and his heirs forever, except the liability aforesaid. But should the tenant or his heirs afterwards be evicted therefrom, by a higher or better title of any claimant or claimants, if he shall have duly notified the original demandant, or his heirs, to aid him in the defence of such suit, and admitted him to aid accordingly, in case of his appearing and offering to aid, such tenant or his legal representative shall be entitled to receive and recover back the same money, with the lawful interest thereof from him, her or them, who shall have had the use and benefit thereof in an action for money had and received to the use of such tenant or his legal representative; and if the demandant shall not so make his election on record as aforesaid, no writ of seizin or possession shall issue on a judgment founded on such verdict, unless the demandant shall, within one year from the rendition thereof, have paid into the Clerk's office of the same Court, or to such other person as the Court may for that purpose appoint, for the use of the tenant, or the person or persons justly entitled thereto, such sum with the interest thereof, as the Jury shall have assessed for buildings or improvements as aforesaid; and a new action for the recovery of the same premises shall not be sustained in any Court, unless the demandant shall first have paid to the tenant, all such costs as would have been taxed for him had he prevailed in the first suit: *Provided nevertheless*, That nothing herein contained, shall extend to any action which is or may be commenced by any mortgagee, his heirs or assigns, against any mortgagor, his heirs or assigns.

May be extended on,

or sold.

If the tenant is afterwards evicted he may recover back the money paid.

If the demandant does not abandon, writ of seizin to be stayed one year.

Proviso.

Tenant not to cut wood in certain cases.

SEC. 2. *Be it further enacted,* That no tenant against whom judgment shall be rendered in any case, where the value of the buildings and improvements shall have been ascertained as aforesaid, shall unnecessarily cut any wood, or take any timber from off the premises recovered against him, her or them, or make any strip or waste thereof; and such tenant shall be liable to answer therefor in the same way and manner he would have been, had judgment for possession been rendered on the verdict, and possession actually been delivered in execution of such judgment.

If the tenant has in possession more than is demanded, provision in such case.

SEC. 3. *Be it further enacted,* That if the tenant, or person under whom he claims, shall have had in actual possession for the term of six years, or more, before the commencement of such action, any land or tenements more than shall be demanded, and by the tenant be defended in said action, lying in the same tract or parcel therewith, to recover which the demandant had, at the time of the commencement of his action, as high and as good a title as he had to recover the demanded premises, such tenant may request that the Jury may by their verdict ascertain the same, and if the Jury shall find, that the demandant had as high and as good a title to recover such lands or tenements not demanded or any part thereof, as he had to recover the demanded premises, they shall not proceed to ascertain any other point by their verdict, and the Court shall thereupon render judgment that the demandant take nothing by his writ, and that the defendant recover his costs: *Provided,* That if such request be made in any such action now pending or which may hereafter be pending, the Court may permit the demandant without costs so to amend his declaration as to include all the lands or tenements possessed and defended by the tenant in manner aforesaid, of which the demandant had as high and as good a title as he had of the premises originally demanded in the action.

Proviso.

If the writ is amended, provision in such case.

SEC. 4. *Be it further enacted,* That in any such action, the tenant or his attorney may in any stage of the process, and as often as the writ shall be amended as aforesaid, offer and give notice in open Court at what sum he consents, that the increased value of the premises, by virtue of the buildings and improvements shall be assessed, and also at what

sum he consents that the value of the demanded premises, or such part thereof, as is by him defended, shall be estimated without the buildings and improvements, which notice shall be entered on the record of the Court; and if the demandant consent to the same, judgment shall be rendered on said consent of the parties in the same manner, as if the like sums had been found by the Jury in a verdict for the demandant; but if the demandant shall not consent to the said offer and shall proceed in the suit, and the Jury by their verdict shall not reduce the value of the buildings and improvements below the said offer, nor increase the value of the demanded premises as aforesaid above it, he shall not recover costs from and after the first entering of such notice upon the record, but the tenant shall from that time recover his costs, and have his separate judgment and execution for the same, although the verdict on the issue should be against him; unless the demandant shall prevail on a plea of disclaimer in the same suit.

SEC. 5. *Be it further enacted,* That to constitute the possession and improvement intended by this Act, it shall not be deemed necessary that the premises defended shall have been surrounded by fences or rendered inaccessible by other obstructions; but it shall be sufficient if the possession, occupancy and improvement thereof by the tenant, or those under whom he claims, shall have been open, notorious and exclusive, comporting with the ordinary management of similar estates in the possession and occupancy of those who have title thereto, and satisfactorily indicative of such exercise of ownership as is usual in the improvement of a farm by its owner, and no part of the premises demanded and defended in manner aforesaid shall be excluded from the appraisal herein provided because the same may be woodland or without actual cultivation.

What shall constitute a possession and improvement.

SEC. 6. *Be it further enacted,* That no person shall be allowed to sit upon a Jury for the trial of any such action, where the value of the buildings and improvements are to be ascertained or the value of the premises to be estimated by the verdict, where such person shall be interested in a similar question, either as proprietor or occupant; but the same shall be good cause of challenge to such juror.

Who shall not sit on the jury.

Parts of Act,
March 1808,
repealed.

SEC. 7. *Be it further enacted,* That the third, fourth and fifth sections of an Act of the Legislature of Massachusetts passed on the second day of March one thousand eight hundred and eight, entitled "An Act for the limitation of certain real actions and for the equitable settlement of certain claims arising in real actions," and the Acts in addition to the said Act, be, and the same are hereby repealed, and of no further effect in this State.

[Approved June 27, 1820.]

CHAPTER XLVIII.

An Act directing the manner in which Inquests of Office shall be taken to revert Real Estate in the State or to entitle the State thereto.

In what cases
inquests of of-
fice may be
taken in the
S. J. Court.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That in all cases where lands, tenements or hereditaments have heretofore been granted, or confirmed by the late Province or Colony of Massachusetts Bay, Commonwealth of Massachusetts, or by this State, or which may hereafter be granted or confirmed by this State, on certain conditions in such grants or confirmations mentioned, and the State shall claim to be revested in the same, for the breach of one or more of the said conditions, an inquest of office shall thereupon be taken in the Supreme Judicial Court in the county where the estate lies, in the manner following, that is to say, the Attorney General shall, upon the direction of the Legislature, file an information in behalf of the State, in the said Court, at any term thereof, in any county, setting forth among other things, the grant or confirmation, with the conditions therein mentioned, and assigning the breaches of such of the said conditions, as shall be directed by the Legislature; or such breach or breaches of conditions as to him shall appear proper; though there shall be no act of the Legislature designating the same; and alleging that by force thereof the State have right by law to be revested in the said estate, and praying that process may issue thereupon in due course of law; whereupon the Court shall order a scire facias to issue against such person or persons, bodies politic and corporate, or, proprietors as the

Attorney Gen-
eral to file in-
formation,

stating the
grant, condi-
tions and
breaches.

Court to issue
scire facias to
persons in-
formed
against.

Attorney General in his information, shall allege, to hold the estate under such grant or confirmation, returnable to the said Court at one of the terms, to be holden in the county where the estate lies; which scire facias shall be served thirty days before the sitting of the Court to which the same is made returnable. And if the defendant shall not appear, or appearing shall refuse to plead, judgment shall be rendered, that the State be reseized of the estate described in the information; and if the defendants shall, by plea disclaim to hold the said estate, or any part thereof, then judgment shall be rendered that the Attorney General take nothing by his information so far as the same respects the estate so disclaimed, and the defendants, their heirs and assigns shall forever thereafter be estopped from claiming or holding the estate so disclaimed under the said grant or confirmation. But if the defendants shall claim to hold the said estate or any part thereof under such grant or confirmation, and shall traverse the breaches assigned, issue being joined thereon, the same shall be tried by Jury at the bar of the said Court, in the usual and due course of law; and a view may be granted or a plan ordered, when necessary as in the trial of real actions. And if the issue be found in favour of the State, judgment shall be rendered, that the State be reseized of the said estate, and recover costs of suit; for which costs, execution shall issue in due form of law: but if the issue shall be found for the defendants, judgment shall be rendered that they recover their costs of suit, to be taxed by the Court, and paid out of the public treasury, by warrant of the Governor and Council: *Provided nevertheless*, If the only condition alleged to be broken is, that the defendants hold more land under such grant or confirmation than they have right, by force thereof to hold, and the same shall appear, either by verdict of the Jury, or confession of the defendants; then the Justices of the said Court shall have power to assign to the defendants by metes and bounds, at their request and cost, so much of the land which shall be held by the defendants as aforesaid, as shall be equal in quantity to the land they might lawfully have held under such grant or confirmation, and in such part thereof, as shall be just and reasonable, under all the circumstances of the

Scire facias to be served thirty days before Court.

If no appearance, or total or partial disclaimer be pleaded—judgment, how to be entered, for whole or part as case may be. Effect of disclaimer.

If defence be made, what proceedings are to be had.

If issue be in favour of State judgment for reseizin and costs,

If defendant prevail—entitled to costs from treasury,

If condition broken be that defendant holds more land than he is entitled to, Court may assign true quantity.

Parts of Act,
March 1808,
repealed.

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Attorney General in his information, shall allege, to hold the estate under such grant or confirmation, returnable to the said Court at one of the terms, to be holden in the county where the estate lies; which scire facias shall be served thirty days before the sitting of the Court to which the same is made returnable. And if the defendant shall not appear, or appearing shall refuse to plead, judgment shall be rendered, that the State be reseized of the estate described in the information; and if the defendants shall, by plea disclaim to hold the said estate, or any part thereof, then judgment shall be rendered that the Attorney General take nothing by his information so far as the same respects the estate so disclaimed, and the defendants, their heirs and assigns shall forever thereafter be estopped from claiming or holding the estate so disclaimed under the said grant or confirmation.

Scire facias to be served thirty days before Court.

If no appearance, or total or partial disclaimer be pleaded—judgment, how to be entered, for whole or part as case may be.

Effect of disclaimer.

But if the defendants shall claim to hold the said estate or any part thereof under such grant or confirmation, and shall traverse the breaches assigned, issue being joined thereon, the same shall be tried by Jury at the bar of the said Court, in the usual and due course of law; and a view may be granted or a plan ordered, when necessary as in the trial of real actions. And if the issue be found in favour of the State, judgment shall be rendered, that the State be reseized of the said estate, and recover costs of suit; for which costs, execution shall issue in due form of law: but if the issue shall be found for the defendants, judgment shall be rendered that they recover their costs of suit, to be taxed by the Court, and paid out of the public treasury, by warrant of the Governor and Council: *Provided nevertheless*, If the only condition alleged to be broken is, that the defendants hold more land under such grant or confirmation than they have right, by force thereof to hold, and the same shall appear, either by verdict of the Jury, or confession of the defendants; then the Justices of the said Court shall have power to assign to the defendants by metes and bounds, at their request and cost, so much of the land which shall be held by the defendants as aforesaid, as shall be equal in quantity to the land they might lawfully have held under such grant or confirmation, and in such part thereof, as shall be just and reasonable, under all the circumstances of the

If defence be made, what proceedings are to be had.

If issue be in favour of State judgment for reseizin and costs,

If defendant prevail—entitled to costs from treasury,

If condition broken be that defendant holds more land than he is entitled to, Court may assign true quantity.

To be located
by persons ap-
pointed by the
Court,

and return
made to the
Court thereof.

If confirmed
by them judg-
ment to be en-
tered.

Inquest in all
other cases to
be taken in the
county where
the lands lie,
by S. J. Court.

Substance of
the informa-
tion to be filed
by Attorney
General.

Notice and
mode of it.

No person ap-
pearing, judg-
ment for State.

If a defence—
to be tried by
jury.

View may be
had.
Proceedings &
judgment.

If defendant
recover judg-
ment, costs to

case, and may order the same to be located by proper persons to be appointed for that purpose by the Court, at the expense of the defendants; which location with a plan thereof, shall be returned to the said Court, and may be confirmed by the same, unless good cause be shown to the contrary by the Attorney General or the defendants. And if such location shall be confirmed, then the Court shall order an attested copy thereof, and of the said plan, to be filed at the expense of the defendants in the Secretary's office, and judgment shall be rendered that the State be reseized of the residue and recover costs of suit.

SEC. 2. *Be it further enacted,* That in all other cases where an inquest of office is necessary by law to entitle the State to hold lands, tenements or hereditaments, such inquest shall be taken by the Supreme Judicial Court in the county in which such estate lies, upon information of the Attorney General, describing among other things the estate claimed, and the title set up thereto by the State; and upon the filing of such information, the same proceedings shall be had as before directed, *mutatis mutandis*, unless where there is no tertenant, and in such case, notice shall be given to any person or persons claiming such estate, to show cause at such term of the said Court, as shall be mentioned in the notification, why judgment should not be rendered, that the State be seized of such estate, by causing an attested copy of such information with the order of Court thereon to be published in such public newspapers as the Court shall direct, three weeks successively, ninety days at least before the sitting of the said Court; and if no person shall appear, and by plea deny the title of the State to such estate, then judgment shall be rendered that the State be seized thereof: But if any person shall appear and by plea, deny the title set up by the State, the cause shall be tried by a jury at the bar of the Court; and a view or a plan may be ordered, as in the trial of real actions; and if a verdict shall be found that the State have good title to such estate, judgment shall be rendered, that the State be seized thereof and recover costs of suit against the defendant; for which costs execution shall issue in due form of law: but if the jury shall find, that the State hath no title to such estate, and that the defendant hath good

title thereto, the defendant shall recover his costs of suit to be paid from State Treasury be taxed by the Court, and paid out of the public treasury by warrant of the Governor and Council; but if the Jury do not find that the defendant hath good title to such estate, then he shall not be allowed his costs.

SEC. 3. *Be it further enacted,* That when it shall be found by the Attorney General, for the time being, that there are any lands, tenements or hereditaments, which for want of legal heirs, have accrued to the State, that it shall be the duty of the Attorney General to prosecute a suit by inquest of office in the Supreme Judicial Court in the county wherein such estate is situated, in order to cause the State to become seized thereof; and that on such process and trial, the person, against whom such process and suit shall be so brought, shall not be allowed to give in evidence, or to avail himself of the title or right of any alien, or subject of another nation or sovereign, unless he can shew that he is tenant to, agent, servant or bailiff of such alien.

Attorney General to prosecute suit by inquest for lands, &c. that have accrued to State for want of heirs.

No defendant to avail himself of alien's title, unless he be his tenant, agent, &c.

SEC. 4. *Be it further enacted,* That if it shall appear to the Court that the person against whom such estate shall be demanded, had, at the time of the service of the process upon him, a good and valid title in himself to the premises demanded, or that he then was in the possession of the same as the tenant, agent, servant or bailiff of any alien who had a right thereto or to any part thereof, then the Court shall award the defendant his full cost, which shall be paid out of the public treasury, according to the Constitution of the State: but if such party had not a title in himself when the process was served upon him, nor was the tenant, agent, servant or bailiff of such alien at that time, but shall have afterwards acquired a title, been made a tenant, or become the agent, servant or bailiff of any alien in whom such estate is, then judgment shall be awarded against him for the full costs: and the Attorney General shall cease to prosecute further on the process.

If on trial the defendant prove himself owner or tenant, agent, &c. of an alien owner he shall be entitled to his costs, &c.

Proceedings in case of title acquired or privilege existing after service of process on defendant.

SEC. 5. *Be it further enacted,* That when any judgment shall be rendered on any inquest of office, that the State be reseized, or seized of any lands, tenements or hereditaments, the State shall immediately upon the rendition of such judgment, be deemed and taken in the law, to be in fact

State to be deemed in actual possession immediately on judgment of reseizin.

MANNER OF NOTICE.

Judgment to
conclude all
parties.

seized of all such estate, to all intents and purposes whatever :
and all judgments rendered on any inquest of office, taken
by virtue of this Act, shall conclude all parties and privies
thereto, their heirs and assigns so long as such judgment
shall remain in full force.

If after State
become seized
for want of
heirs, owner
appear and re-
cover the es-
tate by legal
process,

SEC. 6. *Be it further enacted,* That if after the State shall
become so seized of such estate, as having accrued thereto
for want of legal heirs, any person shall appear, and make
out his right to the same, and shall in due process of law
recover the same against the State, its grantee, assignee, or
tenant, that the same estate shall nevertheless be liable to
all expenses of improvement thereon made, over and
above the rents and profits thereof; and the Attorney
General, or the tenant, grantee or assignee of the State, shall
be empowered to file a bill in equity in the Supreme Judicial
Court of the county where the land is, for the recovery of
the same; and a summons shall be issued, with a copy of
such bill thereunto annexed, and served on the owner of such
land or on his tenant, fourteen days before the sitting of the
Court to which it may be returnable; and that the Supreme
Judicial Court shall proceed to try the same, by a Jury or
otherwise, according to the principles of the laws and
Constitution of the State and shall issue an execution
against such estate for the payment of such sum as shall be
adjudged on such process; and the Sheriff or other officer
to whom the same shall be directed, shall at public auction
sell so much of the same lands as shall be sufficient to pay
the same, with all charges, unless the same shall be other-
wise discharged.

It shall still be
liable for im-
provements
above rents &
profits,

the amount
of which shall
be ascertained
on bill in equi-
ty in S. J.
Court, to be
filed by Attor-
ney General or
tenant, &c.

[Approved February 24, 1821.]

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CHAPTER XLIX.

An Act directing the manner of giving notice in certain cases.

Notice to be
given in a
Portland news-
paper in cer-
tain cases.

BE *it enacted by the Senate and House of Repre-
sentatives, in Legislature assembled,* That in every case,
where any notice respecting real estate is now required
by law to be given by advertisement, in one of the Boston

newspapers, or in the newspaper of the printer of the General Court, for the time being, such notice instead of being given in said Boston newspaper, or in the newspaper of the printer to the General Court, for the time being, shall hereafter, be given by advertising in one of the newspapers printed in Portland, and in one of the newspapers printed in the county where such real estate lies, or the the next adjoining county, if any such newspaper there be.

[Approved June 17, 1820.]

CHAPTER L.

An Act for giving Remedies in Equity.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Justices of the Supreme Judicial Court shall have power and authority to hear and determine in equity all cases of trust arising under deeds, wills or in the settlement of estates; and all cases of contract in writing, where a party claims the specific performance of the same, and in which there may not be a plain, adequate, and complete remedy at law. And the bill or complaint in such cases may be inserted in a writ of attachment or original summons, returnable to the same Court; and such writ be served on the adverse party as other writs of attachment, or original summons are by law to be served. And the said Justices of the Supreme Judicial Court shall have authority to issue all such writs and processes as may be necessary or proper to carry into effect the powers hereby granted: and to make from time to time all necessary rules and orders for the convenient and orderly conducting of the said business: *Provided*, the same be not repugnant to the constitution and laws of this State; and provided also that the cases of contract, to which this Act shall apply, shall be such only as shall be hereafter made in writing, or which have so been made since the tenth day of February in the year eighteen hundred and eighteen.

Equity powers given to Sup. Jud. Court as to trusts under deeds, wills, &c.

What kind of process to be used.

S. J. Court may use all necessary process to carry the powers granted into effect, and make rules, not repugnant to Constitution and laws.

Limitation as to contracts within this Act.

SEC. 2. *Be it further enacted*, That in all causes brought before the Supreme Judicial Court of this State or before

Courts may exercise chan-

every power
as to forfeit-
ures, &c. and
enter judg-
ment for what
is equitably
due.

any Circuit Court of Common Pleas to recover the forfeiture annexed to any articles of agreement, covenant, contract, or charter party, bond, obligation or other specialty or for forfeiture of real estate upon condition, by deed of mortgage, or bargain and sale with defeasance, when the forfeiture, breach or non-performance shall be found by Jury, by the default or the confession of the defendant, or upon demurrer, the Court before which the action is, shall make up judgment therein for the plaintiff to recover so much as is due according to equity and good conscience.

In case of pen-
alties forfeited,
Courts to en-
ter judgment
for the whole
penalty and is-
sue execution
for sum due.

SEC. 3. *Be it further enacted,* That when any action shall be brought and prosecuted on any bond or other specialty, with penalties, for the payment of sums of money, performance of covenants, contracts, agreements, matters or things to be done at several times, and the plaintiff recover the forfeiture of such penalty; the Court shall enter up judgment for the whole of such forfeiture, and award execution only for so much of the debt or damage as is due or sustained at that time, so always that the said judgment shall stand and be a security to the plaintiff, his executors and administrators for any further and after payment or damages he or they may have just right to, by the non-performance or breach of the covenants, contracts, agreements or things in such bonds or other specialties contained; and who may have a writ or writs of scire facias on said judgment from such Court, where the same was obtained, against the defendant, his heirs, executors or administrators, suggesting other and further damages sustained by non-performance or breach of such covenants, contracts and agreements, and to summon him or them to show cause why execution should not be awarded upon said judgment for other and further damages, as set forth in the writ and made out to the Court; upon which the Court shall proceed as aforesaid, as often as such damage shall accrue, and be sued for as aforesaid; or may have his action of debt, or on the case, as the case may require for such payment or damages as aforesaid.

Further dam-
ages in part of
penalty, to be
recovered on
scire facias—

Proceedings
in such cases.

In scire facias
State vs. per-
sons as princi-

SEC. 4. *Be it further enacted,* That in all actions of scire facias brought in the name and on behalf of the State, either in the Supreme Judicial Court or any Circuit Court of Com-

mon Pleas, to recover the penalty or forfeiture of any recognisance taken or entered into in criminal prosecutions, either by principal or sureties, or by witnesses to appear at either of the aforesaid Courts, and give evidence on the part of the State, when the forfeiture, breach or non-performance of the condition of such recognisance shall be found by the default or confession of the party, or by verdict of a Jury, or upon demurrer, the Court before which such action may be brought, may render judgment therein for the State according to the circumstances of the case, and the situation of the party, and may remit either the whole, or any part of the penalty of such recognisance, upon such terms and conditions as to them shall seem reasonable and just; any law or usage to the contrary notwithstanding.

pal, sureties or witnesses—
Courts may remit all or part of the penalty.

[Approved February 20, 1821.]

CHAPTER LI.

An Act to regulate the jurisdiction and proceedings of the Courts of Probate.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That a Court of Probate shall be held within the several counties of the State: and there shall be in the manner the Constitution directs, some able and learned person in each county in the State, appointed or to be appointed Judge, for taking the probate of wills, and granting administrations on the estates of persons deceased, being inhabitants of, or resident in the same county at the time of their decease, or having died without the State, and leaving estate of any kind within the same; for appointing guardians to minors and other persons; for examining and allowing the accounts of executors, administrators, or guardians, and for such other matters and things as the Courts of Probate within the several counties aforesaid, shall by law, have cognizance and jurisdiction of. And the said Judges of Probate shall have full power and authority to make out such process or processes as may be needful for the discharge of the trust reposed in them; and all Sheriffs, Deputy Sheriffs, Coroners and Constables, are required duly to serve and execute all legal warrants, or other pro-

Courts of Probate established.

Judge of Probate—powers and jurisdiction.

cess to them directed, by any Judge of Probate. And contempt of authority in any cause or hearing before any Judge of Probate, shall, and may be punished in like manner as such contempt of authority in any Circuit Court of Common Pleas, may or can by law be punished.

When Judge is interested &c. in any estate, administration, &c. to be in most ancient adjoining county.

SEC. 2. *Be it further enacted*, That whenever any Judge of Probate shall be interested as heir or legatee, creditor or debtor, or within the degree of kindred which by the laws of this State, he might by any possibility be heir in the estate of any person deceased, within the county of such Judge, such estate shall be settled in the Probate Court of the most ancient next adjoining county; and the will, if any, of such deceased person, may be there proved, or administration granted, as the case may require; and all other proceedings had thereon, in such adjoining county, as if such deceased person had belonged to, or died within the same. And whenever due application shall be made in writing to the Judge of Probate of such adjoining county, for the probate of a will, or the granting of letters of administration; in virtue of this Act, he shall, after giving due public notice thereof, proceed thereon and settle such estate as fully, and to all intents as he might any other estate within his proper jurisdiction: *Provided always*, That nothing herein contained shall take away the right of appeal to the Supreme Court of Probate, as allowed in other cases.

Register's power and duty.

SEC. 3. *Be it further enacted*, That there shall be in manner as the Constitution directs, a suitable person in each county appointed, or to be appointed Register of wills, administrations, accounts, decrees, orders, determinations and other writings, which shall be made, granted or decreed upon by the Judges of Probate, in their respective counties; which Register shall be sworn to the faithful performance of the duties of his office, and have the care and custody of all files, papers and books, to the Probate Office belonging; and in case of the death, sickness or necessary absence of the Register, it shall and may be lawful for the Judge of Probate to nominate and appoint some meet person to officiate as a Register, to be sworn as aforesaid, until the standing Register shall be able to attend his duty, or until a new one shall be appointed by the Governor and Council.

Judge of Probate may appoint Register pro tempore.

SEC. 4. *Be it further enacted,* That no Judge of Probate shall be allowed or admitted to have a voice in judging and determining, nor be permitted to be of counsel, or to act as an attorney either in or out of Court, in any civil action, or other process or matter whatsoever, which may depend on, or have relation in any way to any sentence or decree, made or passed by him in his office aforesaid. Nor shall he be of counsel or attorney in any civil action for or against any executor, administrator or guardian, as such within the county in which such said Judge shall reside. And no Register of Probate shall be appointed an administrator or commissioner of insolvency, appraiser or divider of, or upon any estate, or in any manner be interested in the fees and emoluments arising therefrom; or be of counsel, or in any way, directly or indirectly, act as an attorney in any matters and things whatsoever, which are or may be pending in the Court of Probate, of which he is Register, or in any appeals therefrom.

Judge not to be of counsel, &c.

Register not to be administrator, appraiser, &c. nor counsel.

SEC. 5. *Be it further enacted,* That the Judges of Probate, in the respective counties shall have certain fixed days for the making and publishing of their orders and decrees; and such days shall be made known by public notifications thereof in the several counties; and all orders and decrees of Judges of Probate shall be made in writing and duly recorded.

Judges to have stated court days.

SEC. 6. *Be it further enacted,* That the Supreme Judicial Court shall be the Supreme Court of Probate, and shall have appellate jurisdiction of all matters determinable by the Judges of Probate in their respective counties; and all appeals from any order or decree of a Judge of Probate, shall be to the said Supreme Court of Probate accordingly.

Sup. Judicial Court to be appellate Court from Probate.

SEC. 7. *Be it further enacted,* That after the decease of any person intestate, administration of such intestate's goods and estate shall be granted unto his widow or next of kin upwards of twenty-one years of age, or to both, as the Judge of Probate shall think fit, within thirty days; and an inventory shall be taken of all the real estate, goods and chattels, rights and credits of the deceased, within three months, by three suitable persons, appointed by the Judge of Probate. who shall be sworn to the faithful discharge of their

Administration, to whom granted;

inventory, &c. appraisers, how appointed.

Administra-
tors to give
bond:

trust; and when any part of such estate lies without the limits of the county, in which the Judge of Probate lives, who has jurisdiction of the settlement of such estate, he may appoint three suitable persons, within the county where such estate may be, to take an inventory thereof, who shall be sworn in manner as aforesaid. And after the expiration of thirty days from the death of any person intestate, in case the widow or next of kin shall refuse or neglect to take out letters of administration, being cited before the Judge of Probate, for that purpose, if resident within the county, the said Judge of Probate may commit administration of such estate to some one or more of the principal creditors; and in case of their refusal to such other person or persons as the said Judge shall think fit. And every administrator shall, before entering upon the execution of the trust, give bond to the Judge of Probate, with good and sufficient sureties resident within this State, upon condition among other things, to make and return upon oath, a true inventory of the estate administered upon, into the Probate office, within three months, and to render an account of administration within one year from the time of taking administration; which bond shall be in form following:

Form of bond.

Know all men by these presents, That we within the State of Maine, are holden and stand firmly bound and obliged unto , Judge of Probate of wills, and for granting administration within the county of , in the full and just sum of to be paid to the said and his successors in said office; to the true payment whereof, we do bind ourselves and each of us, our, and each of our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals. Dated the day of , in the year of our Lord one thousand eight hundred and

The condition of this obligation is such, that if the above bounden , administrator of all and singular the goods and estate of , deceased, do make or cause to be made, a true and perfect inventory of all and singular the real estate, goods and chattels, rights and credits of said deceased, which have or shall come to the hands, possession or knowledge of , the said , or into the hands

or possession of any other person or persons for , and the same so made, do exhibit or cause to be exhibited upon oath into the Registry of the Court of Probate of the said county of , at or before the day of next ensuing; and the same goods and chattels, rights and credits, and all other the goods and chattels, rights and credits of the said deceased, at the time of death, which at any time after shall come to the hands and possession of the said , or into the hands and possession of any other person or persons for the said , do well and truly administer according to law; and further to make or cause to be made, a just and true account of said administration, upon oath, on or before the day of which will be in the year of our Lord, one thousand eight hundred and , and all the rest, residue and remainder of the said goods and chattels, rights and credits, which shall be found remaining upon the said administration account, (the same being first examined and allowed by the Judge, for the time being, of Probate of Wills and for granting administrations within the county of , aforesaid) shall deliver and pay unto such person or persons respectively, as the said Judge by his decree or sentence, pursuant to law, shall limit and appoint: and if it shall hereafter appear, that any last will and testament was made by said deceased, and the executor or executors therein named do exhibit the same into the Court of Probate of the said county of , making request to have it allowed and approved accordingly; if the said above bounden, being thereunto required, do render and deliver the said letter of administration (approbation of such testament being first had and made) into the said Court; then the before written obligation shall be void and of none effect, or else shall abide and remain in full force and virtue.

Sealed and delivered }
in presence of us, }

SEC. 8. *Be it further enacted,* That when any person who has died or shall die intestate without the State, shall leave estate of any description within the same to be administered, any person interested in such estate shall be entitled to letters of administration thereon in like manner as if such in-

Administration may be granted on the estate of persons dying out and leaving estate within the State.

testate had died within the State ; and the Judge of Probate of any county, wherein such estate shall be found, shall have power to grant such letters of administration accordingly, which shall extend to all the estate of such intestate within the State, and the same estate shall be settled in the county where such letters of administration shall have been first granted ; and after such letters shall have been granted and notice thereof given by the administrator in like manner as in other cases, any new letters of administration on the same estate shall be void.

Judge to examine and approve all Probate bonds.

SEC. 9. *Be it further enacted,* That in all cases wherein by law bonds are required to be given to any Judge of Probate, or to be filed in the Probate office, it shall be the duty of the said Judge first to examine and approve of such bonds, and upon their being so approved, but not otherwise, the said Judge shall order the same to be filed or recorded in the Probate office.

Administrators to account for personal estate as appraised, unless sold by order of Judge.

SEC. 10. *Be it further enacted,* That every administrator shall be held to account with the Judge of Probate, for the personal estate of the deceased, as the same shall be appraised, unless the said Judge shall think it will be more for the benefit of the parties interested, otherwise to dispose of the same, in which case the said Judge shall order the same or any part thereof, to be sold at public auction, or at private sale in such manner as he shall determine will best serve the interest of all parties interested ; and the administrator shall account for such estate as the same shall have been sold : *Provided always,* That such sale shall be ordered within the term of three months from the return of the inventory, and not afterwards, unless the said Judge of Probate, shall for special reasons, think proper to allow a further term not exceeding six months.

If sold, to be within three months from return of inventory.

Wills to be filed in Probate office within thirty days after decease of testator ;

SEC. 11. *Be it further enacted,* That whenever any executor or executors of the last will of any person deceased, knowing of their being so named and appointed, shall neglect to cause such will to be filed within thirty days next after the death of the testator in the Probate office of the county where he last dwelt, and proved and recorded within such time as the Judge of Probate shall limit and appoint ; or present the said will, and in writing declare his, her or their refusal, every executor so neglecting his or her trust

and duty in that behalf, (without just excuse made and accepted by the Judge of Probate for such delay) shall forfeit a sum not exceeding sixteen dollars a month, from and after the time limited as aforesaid, until he, she or they shall cause said will to be filed and probate thereof to be made, or present the same as aforesaid; and such forfeiture shall be had and recovered by any party interested in the estate devised by such will, and by no other person, by action of debt in the Circuit Court of Common Pleas, holden within and for the county where such will ought by law to be proved; and in case of such forfeiture being incurred as aforesaid, judgment may be rendered by the Court for any sum not exceeding sixteen dollars a month as aforesaid, for and during the time of delay above mentioned; and upon any such refusal of the executor or executors, the Judge of Probate shall commit administration of the estate of the deceased, with the will annexed, unto the widow or next of kin to the deceased, or one or more of the devisees, or in case of their refusal, to one or more of the principal creditors, as he shall think fit.

Forfeiture for executor's neglect,

and how recovered.

Judge may grant admin. c. t. a. in case of executor's refusal, &c.

SEC. 12. *Be it further enacted*, That when a will shall be offered for probate to any Judge of Probate in this State, and the witnesses live out of the State, or more than thirty miles distant, or by reason of age or indisposition of body are unable to appear and give evidence in court, the deposition of such witness in writing taken before any person or persons duly authorized by dedimus potestatem by such Judge of Probate, shall have the same force and effect as though the witness was present, and testified in open Court.

Judge may grant dedimus to take depositions of witnesses to wills in certain cases.

SEC. 13. *Be it further enacted*, That where it shall clearly appear to the Judge of Probate either by the consent of heirs at law in writing, or by other satisfactory evidence, that there is no objection to the Probate of any will, it shall be lawful for the said Judge, at his discretion, to decree probate thereof, upon the testimony of one or more of the three subscribing witnesses required by law, as the said Judge shall think proper, whether such witnesses are within the process of the said Judge or otherwise.

Judge may approve of will in certain cases, on testimony of one or more witnesses.

SEC. 14. *Be it further enacted*, That when the executor or any other person interested in a will that has been proved

Copy of wills proved in for-

sign Courts,
may be filed,
&c. in Probate
Court of coun-
ty where es-
tate may be
that is devised.

Notice To be
given.

Appeal allow-
ed.

Proviso as to
operation of
such wills.

Executor to
give bonds to
return invento-
ry, &c.

or to pay debts
and legacies.

Proceedings in
case of neglect
of executor—

and allowed in a Court of Probate in any of the United States, or in a Court of Probate in any other State or Kingdom, pursuant to the laws of such State or Kingdom, shall produce a copy of such will, with a copy of the probate thereof, under the seal of the Court where the same will has been proved and allowed, unto any Judge of Probate in any county in this State, where the testator had estate, real or personal, whereon the same will may operate, and shall, in writing desire the same may be filed and recorded in the Probate Office in the same county, pursuant to this statute, the said Judge shall assign a time and place for taking the same into consideration, and shall cause notice thereof to be made in some public newspaper three weeks successively, thirty days at the least before the time assigned, to the end that any person may appear and shew cause against the filing and recording the same; and if at the time assigned no sufficient objection is made, the said Judge may cause the same copy to be filed in the Probate Office, and direct the same to be there recorded: saving always an appeal to any person aggrieved, to the Supreme Court of Probate. *And provided further,* That nothing in this Act shall be construed to make valid any will or codicil that is not attested and subscribed in the manner the laws of this State direct, nor to give operation and effect to the will of an alien different from that which such will would have had before the passing of this Act.

SEC. 15. *Be it further enacted,* That every executor named in a will hereafter to be proved, and taking upon himself that trust, shall give bond to the Judge of Probate with sufficient sureties, resident in this State, to return upon oath a true and perfect inventory of the testator's estate into the Probate office within three months, and to render an account of his proceedings thereon, in the same manner administrators are by law obliged to do, unless such executor or executors are residuary legatees; in which case bond may be given by him or them to pay the debts and legacies of the testator; and in case such executor or executors shall neglect or refuse, for the space of twenty days, to give bond as aforesaid, the Judge of Probate may commit administration of the estate of such testator, with the will annexed, to

some other person, in like manner as he may grant the same when the executor refuses the trust; and when the executor is under the age of twenty one years at the time of the probate of the will, administration may be granted with the will annexed during the minority of such executor. And where there are divers persons named executors, in any will hereafter to be proved, none shall act as such, but those who give bond as aforesaid.

and when he is a minor,

and when there are divers executors, &c.

SEC. 16. *Be it further enacted,* That when any person who shall hereafter be appointed executor of any will, shall, at the time of the probate of the same, live without this State, he shall before letters testamentary are issued to him, enter into bonds to the Judge of Probate for the county in which the testator lived, with sufficient sureties, being inhabitants of the said State, for his faithful performance of the trust reposed in him: and if such executor shall refuse to enter into such bonds, administration shall be granted with the will annexed, in the same manner as if such executor declined the trust.

Executor living without the State, to give bond in county where testator lived, &c.

SEC. 17. *Be it further enacted,* That when the copy of any will which has been proved and allowed in any Probate Court in any of the United States or in any foreign State or kingdom, shall be directed to be filed and recorded in any Probate Court in this State pursuant to this Act, the filing and recording thereof shall be of the same force and effect as the filing and recording of an original will proved and allowed in the same Court of Probate; and the said Judge may thereupon proceed to take bond of the executor, or grant administration of the said testator's estate, lying in this State, with the will annexed, and settle the said estate in the same way and manner as by law he may or can the estates of testators, whose wills have been duly proved before him.

Effect of filing and recording copies of wills proved out of State.

SEC. 18. *Be it further enacted,* That whenever an executor or administrator shall be appointed to the estate of any person deceased, and shall take upon himself that trust, by giving bond faithfully to discharge the duties thereof, as the law directs, he shall make known the same within three months, by causing notice thereof to be posted up in some public place in the town or plantation where the deceased

What notice must be given by executors and administrators of their appointment.

Mode of perpetuating evidence of such notice.

Executors and administrators, living out of State, or removing after appointment, and neglecting to render account

or becoming insane or unsuitable, may be removed.

Feme sole appointed co-executor shall lose her authority by intermarriage.

was resident, and had his home at the time of his death; and shall also give such further notice thereof as the Judge of Probate shall in writing direct. And if the deceased was neither an inhabitant nor resident within this State at the time of his death, the executor or administrator shall give such notice of his undertaking that trust, as the Judge of Probate that issued the letter of administration, or approved the will, shall in writing direct: and affidavit of the executor or administrator made and filed in the same Probate Office, within seven months after undertaking that trust, accompanied with an original notification (or a copy thereof) of his undertaking that trust, and recorded in the Probate Office, shall be admitted as evidence of the time, place and manner notice was given.

SEC. 19. *Be it further enacted,* That when any executor of any last will and testament, or administrator of an estate, shall reside without this State at the time of taking upon him that trust, or shall afterwards remove out of this State and shall neglect or refuse, after due notice from the Judge of Probate to render his account and make a settlement of such estate with the creditors, legatees or heirs, or their legal representatives; or when any executor or administrator shall become insane, or otherwise incapable of, or evidently unsuitable to discharge the trust reposed in him, the Judges of Probate in their respective counties within this State, are authorized and empowered to remove from office such executor or administrator and grant letters of administration, with the will annexed (or otherwise as the case may require) to such person as to the said Judge shall seem meet. And the administrator thus appointed shall have the same power and authority to administer the estate of the deceased, not administered by such former executor or administrator, and be subjected to the same duties as if the executor or administrator were dead. And when a feme sole shall jointly with one or more persons, be appointed executrix, or administratrix, and after such appointment shall during the life of the other co-executor or co-administrator marry, such marriage shall not make the baron an executor or administrator in her right; but shall operate as an extinguishment or determination of such woman's pow-

er and authority. And the other executor or executors, administrator or administrators, may proceed to discharge the trust reposed in them in the same way and manner as if such woman were dead. And the executor of an executor, shall not in consequence thereof, become an executor of the first testator; but in every such case, administration may be granted upon the goods and estate of the first testator, unadministered, with the will annexed, to such person or persons as the Judge of Probate may think fit. And where there is more than one executor or administrator, and any or either of them shall be removed from office by the Judge of Probate for any of the causes mentioned in this section, the other executor or executors, administrator or administrators, may proceed to discharge the trust reposed in him or them, in the same manner, as if said executor or executors, administrator or administrators so removed were dead; and may bring actions of account against them, and recover by any proper legal process such effects, and assets as remain in their hands unadministered at the time of their removal.

One or more executors, &c. may be removed in case &c.

SEC. 20. *Be it further enacted,* That no administration of the goods or estate of any deceased person, not administered upon by a former executor or administrator, shall be granted until it shall evidently appear to the Judge of Probate, by the oath of the party applying or otherwise, that there is personal estate of such deceased person to the amount of twenty dollars or upwards, or debts of the like or greater value due from such deceased person unpaid, nor shall administration be originally granted upon the estate of any deceased person after the expiration of twenty years from the death of such person.

No administration to be granted on estate of less value than \$20.

SEC. 21. *Be it further enacted,* That when an executor or administrator shall exhibit a claim in writing, against his testator or intestate, to the Judge of Probate, having cognizance thereof for allowance, and the same shall be disputed by any person interested adversely in the allowance thereof, it shall be lawful for the said executor or administrator, and the legatees or heirs whose interest will be affected by the issue thereof, to submit the determination of such claim to referees who may be mutually agreed upon by the parties interested; and the Judge of Probate, before whom

Disputed claims of executor or administrator may be referred before Judge.

Submission to
be in writing,
&c.

such submission is made, may receive, approve and allow the report of such referees, made in writing pursuant to the submission, and decree accordingly : *Provided*, The submission be made in writing, and signed by all the parties interested therein, or their agents duly authorized thereunto, and when any of the parties are minors, by his or their guardians duly appointed.

Income of real estate to be appraised by Committee appointed by Judge.

SEC. 22. *Be it further enacted*, That when a dispute shall arise respecting the occupation, use and improvement of real estate in the hands of the executor or administrator, and the quantum he ought to credit in his account therefor, it shall and may be lawful for the Judge of Probate to appoint three disinterested persons living near to the estate, to ascertain the true value thereof; and the report of them, or the major part of them, made thereupon, in writing, after hearing the parties and accepted by the Judge, shall be the sum the executor or administrator shall be charged with, in his account, and no more.

Administrator or executor to account for such income as appraised.

Judges may compel by citation, &c. persons entrusted with estate by executors or administrators to disclose on oath, &c.

SEC. 23. *Be it further enacted*, That the several Judges of Probate be, and hereby are empowered to convene before them any person that has been or may hereafter be entrusted by any executor or administrator with any part of the estate of the testator or intestate, who shall refuse upon a citation issued by the Judge of Probate for that purpose, to appear before him, and render a full account, upon oath of any money, goods or chattels, and of any bonds, accounts or other papers belonging to the estate of the testator or intestate, which he shall have taken into his hands or custody, and of his proceeding for and in behalf of such executor or administrator in his capacity as such. And if such person shall refuse to render account as aforesaid, such Judge may proceed against him in the way and manner herein directed for persons suspected of concealment, who refuse to answer interrogatories upon oath.

Judges may call before them, &c. persons suspected of concealing or embezzling estate of persons deceased.

SEC. 24. *Be it further enacted*, That each Judge of Probate within his county, be, and hereby is authorized and empowered to call before him and to examine upon oath, any person suspected by any executor or administrator, heir, creditor, legatee or other person having lawful right or claim to the estate of any person deceased, of having con-

concealed, embezzled, or conveyed away any of the money, goods, or chattels left by the testator or intestate, for the discovery of the same. And if the person suspected as aforesaid, shall refuse to be examined, or to answer interrogatories, upon oath respecting the estate which he or she may be suspected of concealing, embezzling or conveying away, it shall and may be lawful for, and the said Judge is hereby empowered to commit such person, so refusing to be examined or answer interrogatories upon oath as aforesaid, unto the common gaol of the county, there to remain until he or she shall consent to be examined and answer interrogatories upon oath as aforesaid, or be released by the consent of the person suspecting him or her, or by order of the Supreme Judicial Court.

Judges may punish persons refusing to disclose, &c. by committing.

Sec. 25. *Be it further enacted,* That when the estate of any person deceased shall be insolvent or insufficient to pay all just debts, which the deceased owed, the same shall be distributed to and among all the creditors in proportion to the sums to them respectively due and owing, saving that debts due for taxes, and debts due to the State, and for the last sickness and necessary funeral expenses of the deceased, are to be first paid. And the executor or administrator appointed to any such insolvent estate before payment to any be made, (except as aforesaid) shall represent the condition and circumstances thereof unto the Judge of Probate.

Insolvent estates to be distributed *pro rata* among all the creditors; excepting that taxes, &c. are to be paid in full.

And the said Judge shall nominate and appoint two or more fit persons to be commissioners, with full power to receive and examine all claims of the several creditors; and such commissioners shall cause the times and places of their meeting to attend the creditors for receiving and examining their claims, to be made known by causing an advertisement thereof to be printed in such public newspaper or papers, or by such other notice as the Judge of Probate shall direct; and six months and such further time not exceeding eighteen months in the whole, shall be allowed by the said Judge to the creditors to bring in and prove their claims; at the end of which limited time, such commissioners shall make their report, and present upon oath a list of all the claims that shall have been laid before them, with the sum they shall allow on each claim unto the said Judge; and the

Commissioners to receive and examine claims, to be appointed;— and to make known their time of meeting, &c.

From 6 to 18 months to be allowed to creditors, by the Judge, for procuring their claims.

Compensation
for commis-
sioners.

Estate real and
personal to be
distributed
among credit-
ors, as allow-
ed, &c.

Saving wid-
ow's dower.

Reversion may
be sold.

Creditor
whose claim is
not allowed by
commissioners
may have it
determined at
common law.

Mode of pro-
ceeding in
such cases.

or such claims
may be deter-
mined by ref-
erees.

No actions
against exec-
utor or admin-

Judge shall order them most recompense out of the deceased's estate for their care and labour in examining the claims ; and the debts due for taxes, and debts due to the State, debts incurred for the last sickness of the deceased, and necessary funeral expenses as afore provided, being first deducted, shall order the residue and remainder of the estate both real and personal (the real estate being sold according to law) to be paid and distributed to and among the creditors who shall have made out their claims with the commissioners as aforesaid, in proportion to the sums unto them respectively due and owing, saving unto the widow her right of dower in the real estate of the deceased, which dower (unless the reversion shall be sold by the executor or administrator, and distributed with the other estate which the Judge may order if he see fit, upon application therefor at the expiration of her term shall also be distributed among the creditors aforesaid in like proportion: *Provided*, That notwithstanding the report of any commissioners, any creditor whose claim is wholly, or in part rejected, may have the same determined at the common law, in case he shall give notice thereof in writing at the Probate office within twenty days after such report shall be made, and bring and prosecute his action as soon as may be, and in case the executor or administrator shall be dissatisfied with any creditor's claim allowed by the commissioners, and shall give notice thereof at the Probate office, and also to the creditor, within twenty days as aforesaid, such claim shall by the Judge of Probate be struck out of the commissioners report, unless such creditor shall commence and prosecute at the common law his claim as aforesaid as speedily as the same can be done, or unless the creditor and the executor or administrator shall agree before the Judge to submit the same to referees ; in which case the determination of the referees shall be final ; and when a claim shall be disputed in the course of the common law as aforesaid, execution shall not issue as in common cases, but the judgment of the Court respecting the same shall be the amount of the claim, and added to, or deducted from the commissioners' report, as the case may require. And no action brought against any executor or administrator after the estate shall be represented

insolvent, shall be sustained, except for debts due to the State, debts due for taxes, for the deceased's last sickness and funeral charges, unless the executor or administrator having objection to the claim upon which such action shall be brought, shall consent to have the same settled by course of law, in which case the judgment of the Court shall determine the said claim, and it shall be reported by the commissioners, or be added to the list of claims by the Judge of Probate. And all actions brought against any executor or administrator before the estate is represented insolvent, shall be continued until it shall appear whether the said estate is insolvent or not; and if found insolvent, the process shall be conducted as above provided. And if any creditor shall not make out his claim with the commissioners within the time of their commission, or at the common law, or before referees, in the manner this Act provides, he shall be forever barred of his debt, unless such creditor shall find some estate of the deceased not inventoried or accounted for by the executor or administrator before distribution, or unless it shall appear that such estate is not insolvent.

istrator of estate rendered insolvent to be sustained, unless, &c.

Actions brought before estate is rendered insolvent, to be continued, &c.

Creditors not making out their claims, &c. as before provided, to be barred, unless, &c.

SEC. 26. *Be it further enacted,* That the commissioners who shall be appointed by any Judge of Probate, to receive and examine the claims of the creditors to the estate of any person deceased, when represented insolvent, shall be and are hereby authorized and empowered to examine, by the oath or affirmation of the creditor, the truth of any claims presented; and the said commissioners, when they are sitting by virtue of such commission, and when it shall be adjudged expedient by a majority of them, may require of such creditor an oath or affirmation, as follows:

Commissioners to examine creditors under oath, as to their claims.

You do swear (or affirm as the case may be) that you will make true answers to the questions which shall be asked you by the commissioners relative to your claim against the estate of ——— (naming the deceased insolvent debtor) now under consideration. So help you God, (or this you do under the pains and penalties of perjury as the case may be.) And thereupon such commissioners may inquire of the truth of any writing, demand, or the charges in any accounts exhibited as a claim against such insolvent estate, and whether the same and every part of such claim remains due

Form of oath.

and unpaid, and may put such other questions relative thereto, as shall be material and tend to discover the truth of such claim.

Violation of such oath to be deemed perjury.

SEC. 27. *Be it further enacted*, That any person who shall take such oath or affirmation, having been administered as aforesaid, and shall thereupon wilfully and corruptly make any false answer or answers to any question or questions material for the determination of the truth of the claim, in proof of which such oath or affirmation shall have been taken, and shall be thereof duly convicted, shall be adjudged guilty of the crime of perjury, and shall be liable to the pains and penalties which are or shall be by law inflicted for the punishment of such crime.

When executor or administrator neglects to settle his account for six months after final report of commissioners, creditor may sue or prosecute the executor or administrator.

SEC. 28. *Be it further enacted*, That whenever any executor of the last will, or administrator upon the estate of any person deceased, shall neglect to exhibit and settle his account of administration with the Judge of Probate where the estate has been represented insolvent, and commissioners have reported to the Judge a list of claims, within six months after such report shall be made to the Judge, or within such further time as the Judge of Probate shall think proper to allow therefor, under his hand and seal, any creditor to such estate may commence and prosecute any action, or may prosecute any action then depending, for his demand against such executor or administrator; and the Court before whom such action may be depending, shall proceed to hear and determine the same and give judgment therein, and award execution thereon, in the same manner as if such estate had not been represented insolvent. And upon the return of such execution, duly made, that the executor or administrator refused or neglected upon due request, to satisfy the same, such refusal or neglect shall be deemed waste; and upon scire facias brought, judgment shall be rendered in favour of such creditor, to recover his debt with costs, and execution shall be awarded against the proper goods or estate of such executor or administrator, and for want thereof, against his body. And if in consequence of such refusal or neglect, the real estate of the deceased shall be levied upon and taken to satisfy such execution, it shall in like man-

and court shall give judgment and execution.

If such execution be returned unsatisfied, &c.

scire facias to be issued to recover against executor or administrator for waste.

If real estate of deceased be taken on such execu-

per be deemed waste in the executor or administrator upon such estate,

SEC. 29. *Be it further enacted,* That when any executor or administrator shall neglect or unreasonably delay to raise money out of the testator's or intestate's estate, or shall neglect to pay what he has in his hands, and by such neglect or delay shall subject the testator's or intestate's estate to be taken in execution, the same shall be deemed waste and unfaithful administration in such executor or administrator.

SEC. 30. *Be it further enacted,* That whenever it shall appear to any Judge of Probate, that any debtor to any estate, within his jurisdiction, is unable to pay all his just debts, and that it is reasonable that his creditors should discharge him from all demands, upon their receiving from him a fair and equitable dividend of all his estate, it shall be lawful for the executor or administrator of any deceased creditor, by the consent and approbation of such Judge, to join with those creditors who may agree in such discharge, and to sign the same upon such executor or administrator's receiving a just portion of said debtor's property to which the said deceased creditor would have been entitled.

SEC. 31. *Be it further enacted,* That whenever in the settlement of the estate of any person deceased, there shall be any real estate to be divided among his or her heirs or devisees, the Judge of Probate having jurisdiction of the settlement of such estate, shall by warrant directed to a committee of three discreet and disinterested freeholders, who shall be under oath, cause such real estate situated in one or more counties in the State, to be divided among the heirs or devisees of the person deceased, pursuant to his or her will or to the laws regulating the descent and distribution of intestate estates, as the case may be; and where such real estate cannot be divided among all the heirs or devisees, or their legal representatives, without great prejudice to, or spoiling the whole, the said Judge may assign the whole to one, or to so many of the heirs or devisees as the same will conveniently accommodate, always having due regard to the terms of any devise there may be in the case, and also preferring males to females, and among the children of the deceased, elder to younger sons; and if any heir or heirs, de-

tion it shall also be deemed waste.

If executor, &c. neglect to raise money &c. to pay debts so that deceased's estate be taken on execution—it shall be deemed waste.

Executor or administrator of deceased creditor may join with other creditors in compounding with debtors, in certain cases—by consent of Judge,

Judge may cause real estate in one or more counties to be divided among heirs or devisees:

Mode of proceeding where estate cannot be divided among all the heirs without injury, &c.

No conveyance by heirs or devisees to prevent division under authority of Judge.

When dower is to be assigned, or partition ordered, and such estate lies in common, Judge to order the deceased's estate to be severed, by committee, they giving notice, &c.

Such division recorded, &c. to be binding.

Provision for appointment of guardians for minors, &c. and agents for persons absent.

visée or devisees to whom any real estate shall be so assigned, shall not accept the same and make, or secure payments to be made, as the said Judge of Probate shall direct, then, and in such case the same may be so assigned to one or more of the other heirs or devisees successively; in every case the heir or heirs, devisee or devisees to whom the same estate shall be assigned as aforesaid, paying to the other heirs or devisees, their heirs or assigns, their proportionable shares of the true value thereof on an appraisement to be made by such committee, or giving such sufficient security to pay the same, and in such convenient time or times as the said Judge of Probate shall direct, with lawful interest until paid. And no conveyance made by any heir or devisee, of his or her interest or estate in the lands of any testator or intestate, shall take from such Judge of Probate his jurisdiction and authority to divide and assign the real estate of any testator and intestate among his or her heirs or devisees, in manner aforesaid.

SEC. 32. *Be it further enacted*, That when the Judge of Probate shall issue such warrant for the purposes aforesaid, or for the assignment of dower in any such real estate, and such real estate shall lie in common and undivided with that of any other person or persons, the said Judge shall direct the committee named in such warrant, first to sever and divide the estate of the deceased from that of such other person or persons, the said committee first giving timely notice to all parties interested in said estates, that they may be present if they see fit at the making of any such divisions.

SEC. 33. *Be it further enacted*, That such division of any such real estate, made as aforesaid, and accepted by the said Judge of Probate, and recorded in the Probate office of the same county shall be binding on all persons interested: *Provided nevertheless*, That when any minor or any person non compos mentis, or otherwise incapable to take care of their estates, or any persons who shall be out of the State, are interested either in the estate of such deceased person, or in the estate with which it so lies in common, guardians shall be appointed for such minors, persons non compos, or otherwise incapable; and some suitable person shall be appointed for such absent persons by the said Judge before

such division, to represent and act for them respectively in the making thereof: *And provided also*, That before an order for such division shall issue, it shall be made to appear to the said Judge of Probate, that the several persons interested in such estate, if living within the State, and the attorney, if any, or other suitable person or persons, appointed as aforesaid, of such as may be absent from the State, have had such due notice of such partition as the said Judge shall have ordered and have had opportunity to make their objections to the same: *Provided also*, That where an estate is devised, it shall be lawful for the said Judge to order the whole or that part of it whereof partition is applied for, to be divided among the devisees, according to their true proportions thereof, by said committee.

Notice to be given before ordering such division.

Division to be in whole or part, &c.

SEC. 34: *Be it further enacted*, That every committee appointed to make division as aforesaid, and the appraisers and commissioners appointed by the Judge to perform any service respecting the estate of any person deceased, or persons appointed to set off the widow's dower therein, and by law directed to be under oath, may be sworn before the Judge of Probate appointing them, or before some Justice of the Peace; and in case there shall be no Justice of the Peace in the town where such estate may lie, then before the Town Clerk of such town; and a certificate of such oath shall be returned by such Justice or Town Clerk, to the Probate office from which the warrant to such committee, appraisers or commissioners, shall have issued.

Committee, appraisers, commissioners &c. to be under oath.

SEC. 35. *Be it further enacted*, That all such partitions of real estate made, accepted and recorded as aforesaid, shall be valid in law to all intents and purposes, unless upon the appeal of any party aggrieved thereby, the same should be reversed or altered by the Supreme Court of Probate; but no partition shall be ordered by any Judge of Probate under this Act, when the proportions of the heirs or devisees, or any of them, shall be disputable by the tenor of the will in the case, or any other matter in writing from which it shall appear that the proportions are uncertain, and ought in the opinion of said Judge first to be legally ascertained.

Partitions of real estate so made and accepted, to be valid, unless altered on appeal.

No partition to be ordered by Judge, when proportions, &c. appear to be uncertain or disputable.

When message, &c. is of greater value than one's share, committee may assign it to one, he paying the surplus to the party deficient.

SEC. 86. *Be it further enacted,* That when any message, tract of land or tenement, shall be of greater value than the share of any party in any real estate, to be divided as aforesaid, and the same message, tract of land, or other tenement, cannot without great inconvenience be sub-divided, the same may be assigned to one of the parties only, such party paying such sum or sums of money to the other parties, who in consequence thereof have less than their shares of such real estate so divided, as the committee appointed to divide the same shall award, and at such time and manner as the Judge of Probate shall direct.

Parties refusing to pay their proportion of the expenses of partition may be compelled by warrant of distress from Judge; the account of expenses being first allowed.

SEC. 37. *Be it further enacted,* That when any partition shall be made as aforesaid, and any one or more of the parties interested in the estate descended or devised, shall neglect or refuse to pay their just proportion of the charges attending the same partition, it shall be lawful for the said Judge of Probate to issue a warrant of distress against such delinquent for the amount of such proportion and costs of such process: *Provided always,* That an account of such charges be first exhibited to the said Judge, and the just proportion of such party so interested, be settled and allowed, such party having had due notice to be present at the settlement and allowance thereof.

Reversion, &c. may be divided.

SEC. 38. *Be it further enacted,* That in case of any division and settlement of real estate, pursuant to the warrant of a Judge of Probate in manner aforesaid, it shall be lawful for such Judge to order a division of the reversion and remainder expectant upon determination of any estate in dower in like manner as the division of the other parts of such estate: and the division of such reversion and remainder shall be ordered and made, either at the same time with the division of the other parts of such real estate, or upon the determination of the estate in dower, at the discretion of the said Judge, whether such estate in dower shall be determined by the decease of the tenant in dower, or by the voluntary relinquishment thereof, or in any other manner.

Widow entitled to necessities, &c. in settlement of intestate es-

SEC. 39. *Be it further enacted,* That in the settlement of intestate estates, whether they be solvent or insolvent, the widow shall be entitled to her apparel, and such other and so much of the personal estate as the Judge of Probate shall

determine necessary, according to her quality and degree ; regard being had to the state of the family under her care. And in cases where such allowances shall have been made from intestate estates, represented to be insolvent, which ultimately appear to be solvent, the Judges of Probate be, and hereby are respectively authorized by a subsequent decree to make such further allowances to the widow from the personal estate of her husband, having regard to what shall have been allowed as he shall deem reasonable. And whenever a testate estate shall be insolvent, the Judge of Probate shall have the same authority to allow personal estate to the widow as he possesses in case of estates intestate ; and in all cases of insolvency of estates whether testate or intestate, if there be no widow, the Judge of Probate shall have the like authority to make an allowance of personal estate to the children of such deceased persons who are minors.

testate, solvent or insolvent.

Further allowance in case.

In estates testate and insolvent allowance to widow.

In all insolvent estates where there is no widow, allowance may be made to minors, of personal estate.

SEC. 40. *Be it further enacted,* That all gifts or grants made by the intestate, to any child or grand child, of any estate, real or personal, in advancement of the portion of such child or grand child, and which shall be expressed in such gift or grant, or otherwise charged by the intestate in writing, or acknowledged in writing by the child or grand child, as made for such advancement, such estate, real and personal shall be taken and estimated in the distribution and partition of the intestate's real and personal estate as part of the same, and the estate so advanced, shall be taken by such child or grand child towards his share of the intestate's estate. And the value at which such estate shall be so taken, shall be the same as above expressed or charged by the intestate, or acknowledged by the child or grand child, if any value be so expressed, charged or acknowledged, otherwise at the value thereof when given.

Advances, &c. made to children, &c. shall be estimated in partition and distribution of estates.

Mode of estimating.

SEC. 41. *Be it further enacted,* That in the distribution of the personal estate, alienage in the person claiming a distributive share thereof, as issue, widow or otherwise, shall be no impediment to such person's receiving the same.

Alienage no impediment to receiving share of personal estate.

SEC. 42. *Be it further enacted,* That whenever any heir or legatee shall be entitled to demand any distributive share or legacy in any estate, the executor or administrator of

Executor or administrator may require

head of indemnity from heirs, &c. demanding share or legacy if Judge deem it reasonable before payment.

such estate may, before payment of such distributive share or legacy, require bonds to be given to himself, if the Judge of Probate shall deem it reasonable, with such surety or sureties as the said Judge shall approve, by the parties or any of them who shall demand payment of such distributive shares or legacies, with condition, that the party or parties, to whom the same shall be paid, shall refund a proportional part of such estate, or otherwise indemnify such executor or administrator against any demands which may be made against the testator or intestate respectively.

Executor, if residuary legatee may have action of account against co-executor.

SEC. 43. *Be it further enacted*, That any executor being a residuary legatee, may bring an action of account against his co-executor or co-executors of the estate of the testator in his or their hands, and may also sue for, and recover his equal and proportionable part thereof; and any other residuary legatee shall have like remedy against the executors. And any person having a legacy given in any last will, may sue for, and recover the same at the common law.

Residuary and other legatees may sue executor at common law.

Who shall be considered executors in their own wrong.

SEC. 44. *Be it further enacted*, That if any person shall alienate or embezzle any of the goods or chattels of any deceased person before he or she have taken out letters of administration, and exhibited a true inventory of all the known estate of the person deceased, every such person shall stand chargeable and be liable to the actions of the creditors and other persons aggrieved, as being executors in their own wrong.

One administrator may in certain cases have an action of account against his co-administrator.

SEC. 45. *Be it further enacted*, That where two or more persons have letters of administration granted them of any intestate estate, and one or more of them take all or the greatest part of such estate into their hands, and refuse to pay the debts or personal charges of such intestate, or refuse to account with the other administrator, then, and in such case it shall be lawful for such aggrieved administrator to bring his action of account against the other administrator or administrators, and recover his proportionable share of such intestate's estate as shall belong or appertain to him.

Judge to allow guardians to be chosen by

SEC. 46. *Be it further enacted*, That the Judge of Probate in each county be and he is empowered to allow of guardians that shall be chosen by minors of fourteen years

of age, and to appoint guardians for such as shall be under that age, who shall give bond with sufficient sureties resident in this State, for the faithful discharge of their trust, to return a true and perfect inventory of the estate of such minor upon oath within three months, and to account either with the Judge or minor when such minor shall arrive to the age of twenty-one years, or at such other time as the Judge shall direct. And when any minor above the age of fourteen years shall be cited by the Judge of Probate to choose a guardian, and such minor shall refuse or neglect to appear, or appearing, shall refuse to choose a guardian, or any guardian chosen by such minor shall be unable to give bond as aforesaid, or shall refuse the trust; or when any minor above the age of fourteen years shall be without this State, in every such case the Judge of Probate shall have the same power to appoint a guardian as though such minor were under the age of fourteen years: *Provided nevertheless*, That when a minor above the age of fourteen years living more than ten miles distant from the Probate office, shall choose a guardian, such minor may have that choice certified to the Judge by any Justice of the Peace in the same county: *Provided*, No executor or administrator on an estate, shall be appointed guardian to any minor interested therein.

minors of 14 years of age, and to appoint guardians to those under 14. Guardians to give bond; to return inventory account, &c.

Minors above 14 may, if more than 10 miles distant from Probate office, have their choice certified by Justice of Peace, &c.

SEC. 47. *Be it further enacted*, That every guardian, who shall be appointed to any minor having real estate, goods and chattels, rights or credits, shall be required to return upon oath into the Probate office a true and perfect inventory of all such real estate, goods and chattels, rights and credits, within three months.

Guardians to minors to return inventory in 3 months.

SEC. 48. *Be it further enacted*, That the guardian of any minor having a right in reversion or remainder in and to any estate set off to the widow of any deceased person, as and for her dower, may, with the consent of the Judge of Probate having jurisdiction of the settlement of such estate, purchase from the tenant in dower or her assigns, her or their interest in the same, for the benefit of such minor, and from his or her personal estate. And all monies, so applied, may by such guardian, be charged to such minor in account; and all the rents and profits of such estate shall be credited to the minor, in like manner as the rents and prof-

Guardians may, in certain cases purchase remainder or reversion of tenant in dower, for benefit of minor.

Proviso.

its, which arise from his or her other estate : *Provided always*, That it be satisfactorily proved to the Judge of Probate, that such purchase will be for the manifest advantage of such minors.

Judges to appoint guardians to non compos, lunatic, idiots, &c.

If selectmen, after inquiry, certify them to be incapable, &c.

Guardians, so appointed, to take care of the persons & estates, and return inventory, &c.

Proceedings against persons suspected of embezzlement of property belonging to idiots, non compos, &c.

Guardians of such persons to manage their estate frugally, and

SEC. 49. *Be it further enacted*, That the Judges of Probate, within their respective counties, upon request made by the friends, relations or creditors of any idiot, *non compos* or lunatic person, or by the Overseers of the poor in such town where such idiot, *non compos*, or lunatic person lives, or is an inhabitant, may direct the Selectmen of such town to make inquiry thereinto, and if the person said to be an idiot, lunatic or distracted person, shall be adjudged by the Selectmen of the town (or the major part of them) where such person resides, to be incapable of taking care of him or herself, and they shall certify the same under their hands, to the Judge, the said Judge of Probate after giving due notice to such idiot, *non compos*, or lunatic person, shall be empowered to appoint some suitable person or persons to be guardian or guardians to such idiot, lunatic, *non compos* or distracted person, directing and empowering such guardian or guardians to take care of the person and estate, both real and personal, of such person, to make a true and perfect inventory of the said estate upon oath, to be returned into and filed in the Probate office in such county.

SEC. 50. *Be it further enacted*, That the Judges of Probate in their respective counties, are authorized and empowered, upon the complaint of any heir, creditor or other person having lawful right or claim in expectancy to the estate of any idiot, lunatic, *non compos* or distracted person, or the guardian or guardians, to proceed with any person or persons suspected of concealing, embezzling, or conveying away any of the money, goods or chattels of such idiot, lunatic, *non compos* or distracted person, in the same way and manner as is by law prescribed for persons suspected of concealing, embezzling or conveying away the money, goods or effects of deceased persons.

SEC. 51. *Be it further enacted*, That the guardian or guardians appointed as aforesaid, shall improve frugally and without waste and destruction, the estate of the idiot, *non compos*, lunatic or distracted person, and apply the annual

income and profits thereof for the comfortable maintenance and support of the said idiot, lunatic, *non compos*, or distracted person, and also of his or her household or family; and the said guardians are hereby empowered to settle accounts, receive, sue for, and recover all just debts due to the said idiot, lunatic, *non compos*, or distracted person, from any person or persons whomsoever, and to manage, improve or divide the real estate in as full and ample a manner as the said idiot, lunatic, *non compos* or distracted person might or could do, were he restored to the full use of his reason; and shall also be subject to the payment of all just debts owing by such person which were contracted before his distraction, out of his personal estate, or in case that be insufficient, then out of the real estate, being first empowered to make sale thereof by any Court having power to grant license for that purpose, in the way and manner executors or administrators are empowered to make sale of the real estate of deceased persons. And in case the income or improvement of the personal and real estate of such persons shall not be sufficient to support them, the Court aforesaid may license and authorize the guardians to make sale of the whole or part of the real estate of such person for that purpose, as occasion may require. And in case any such idiot, lunatic or distracted person shall be restored to the use of his reason, the residue and remainder of the estate, real and personal, shall be returned and delivered to him, or in case of his death, to his heirs, executors or administrators; the guardian or guardians having first such reasonable allowance out of the same for their charge and trouble as the Judge of Probate shall order.

support them comfortably—

collect debts, &c.

and pay debts previously contracted.

Apply to Courts for license to sell real estate, if necessary:

and account with their wards, if restored to reason, &c. or if dead, with their heirs, &c.

Sec. 52. *Be it further enacted,* That the Judges of Probate in their respective counties may appoint guardians for the children of lunatics, idiots, *non compos*, or distracted persons, in the same manner as though their parents were dead.

Judge may appoint guardians for children.

Sec. 53. *Be it further enacted,* That when any person by excessive drinking, gaming, idleness or debauchery of any kind, shall so spend, waste or lessen his or her estate, as thereby to expose himself or herself, or his or her family to want; or shall by thus spending, wasting or lessening his

Judge may appoint guardians to spendthrifts, idlers, &c.

Mode of proceedings in such cases.

Conveyances by spendthrifts after application for guardian to Judge, to be void in certain cases.

Guardians of spendthrifts, &c. subject to like duties, &c. as guardians to idiots, &c.

Feme sole, appointed guardian, to lose her authority by being married.

or her estate, endanger or expose the town to which he or she belongs, in the judgment of the Selectmen thereof, to charge or expense for the maintenance or support of him or her, or his or her family, such Selectmen, or the major part of them, shall make a complaint in writing to the Judge of Probate for the county to which the person so spending, wasting or lessening his estate, doth belong; and if it shall appear to the said Judge of Probate, that the person complained of comes within the description of this Act, and has had due notice of the complaint exhibited against him or her, the said Judge of Probate shall appoint the said Selectmen, or the major part of them, or some suitable and discreet person or persons, guardian or guardians to such person. And whenever the Selectmen of any town or a major part of them, shall make application to the Judge of Probate for the appointment of a guardian to any person, who by excessive drinking, gaming, idleness or debauchery, is wasting his estate, and the Judge of Probate shall, by his decree, order notice to the person complained against, the complainants may file a copy of their said complaint, with the order of the Judge of Probate thereon, in the office of the Register of Deeds for the same county, or after the appointment of such guardian, if no such copy shall have been so filed as aforesaid. And in case a guardian shall be appointed by the Judge of Probate to the person complained against, all and every gift, bargain, sale or transfer of any real or personal estate, made by such person or persons, after the filing of the copy of said complaint and order of the Judge of Probate, with the Register of Deeds, shall be void and of no effect. And the guardian or guardians that may be thus appointed, shall, in discharging the duties of their appointment, pursue the same method, give like bond and be under similar obligations for a faithful discharge of their trust; as guardians appointed for any idiot, lunatic, or for persons *non compos mentis*.

Sec. 54. *Be it further enacted,* That when a feme sole, shall be appointed by any Judge of Probate either by herself, or jointly with any other person or persons, guardian to any person either minor, idiot, *non compos*, distracted or lunatic; and after such appointment, shall marry, such mar-

riage shall not make the baron guardian in her right, but shall operate as an extinguishment or determination of such woman's power and authority.

SEC. 55. *Be it further enacted*, That any Judge of Probate may dismiss any guardian of a minor; idiot, *non compos* or lunatic person, or of persons who spend their estates by excessive drinking, idleness or debauchery, whenever it shall appear to the said Judge, to be necessary or expedient, and to appoint some other guardian in his place: *Provided always*, That no such guardian shall be dismissed as aforesaid, before he shall have had notice in writing, from said Judge, fourteen days at least before the time of hearing, to appear and show cause why he should not be so dismissed.

Judge may dismiss guardians when necessary.

SEC. 56. *Be it further enacted*, That before any guardian shall transfer or draw from any loan office, bank, insurance office or other corporation, any loan office certificate, or share in such bank, insurance office or other corporation, or any stock in any public fund, belonging to the ward of such guardian, it shall be the duty of such guardian to obtain license so to do, from the Judge of Probate of the county where such guardian has been or shall be appointed; and upon neglect thereof, such guardian shall be removed from office, and shall be considered as having forfeited his probate bond.

Guardians not to transfer stocks, &c. belonging to their wards without license from Judge of Probate.

SEC. 57. *Be it further enacted*, That in any case where the oath of an executor, administrator or guardian, is or may be required by law to be made personally before the Judge of Probate, to an inventory, or to any account which is to be settled by such Judge, and such executor, administrator or guardian, shall be unable by reason of sickness, bodily infirmity or otherwise, to attend before such Judge, it shall be lawful for such Judge by commission of *dedimus potestatem*, to authorize any disinterested Justice of the Peace to administer such oath, a certificate whereof shall be returned to such Judge, together with such commission and inventory or account and the vouchers to prove the same.

Judge may grant dedimus to administer oaths to executor, administrator, and guardians in certain cases.

SEC. 58. *Be it further enacted*, That all persons who are or may be constituted trustees of any estate, real, personal or mixed, belonging to minors or other persons, to whom

Trustees of estates of minors and others, appoint-

ed by will, to
give bond to
Judge.

Condition of
such bond.

Provisions as
to cases in
which bonds
shall not be
required.

such estate has been or may be devised, in trust for such minors or other person, by the last will and testament of any person, shall, except in the cases hereinafter mentioned, give bond to the Judge of Probate of the county in which such last will and testament has been or shall be proved, approved and allowed, with sufficient surety or sureties within the State, in such sum as the said Judge shall order, conditioned for the faithful execution of such trust according to the true intent and meaning of the testator; and that the trustee shall make a true and perfect inventory of the real estate, goods and chattels, rights and credits of such minors or others, to be returned, filed and recorded in the Probate office of such county at such time as the said Judge shall order, and that the said trustee will annually render an account to the said Judge of the annual income and profits thereof; and at the expiration of such trust will adjust and settle his accounts with the said Judge, and will pay and deliver over all balances and sums of money or other property that may be due, and give possession of the other estate belonging to such minors or others with which such trustees may have been entrusted: *Provided nevertheless,* That no trustee, so long as he shall continue faithfully to execute the trust, shall be obliged to give bond as aforesaid, in any case in which the testator in his last will shall have directed or requested, that such bond should not be given, nor in any case, in which all the cestui que trusts being of full age, and legal capacity, shall signify to the Judge of Probate his or her request, that such bond should not be taken: *And provided also,* That no person appointed a trustee before the passing of this Act, and having entered upon the execution of the trust without having given bond as aforesaid, shall be obliged to give such bond, or be subject to any of the requirements of this Act, unless after being cited to appear before the said Judge upon complaint in writing, it shall appear to the said Judge upon a full hearing, that it is necessary that such bond should be given in order to secure the faithful execution of such trust: *And provided also,* That such bond shall not be required of any such trustee who entered upon the execution of his trust before the passing of an Act, entitled, "An Act requiring the trustees of the prop-

erty of minors and others to give bond in certain cases," made and passed on the twenty fifth day of February in the year of our Lord one thousand eight hundred and eleven, and who has continued and shall continue faithfully to execute his trust: *And provided also*, That nothing in this or in either of the following sections shall be construed to take away any of the powers which are now by law vested in the Supreme Judicial Court.

SEC. 59. *Be it further enacted*, That any person who has been, or shall be constituted a trustee as aforesaid, and who shall neglect or refuse to give bond as aforesaid, shall be considered as having declined the acceptance of such trust; and the trustee or trustees who may be appointed by the Judge of Probate as is hereinafter provided, shall and may thereupon be authorized to demand and receive of the trustees originally appointed as aforesaid, all such estate as may have come to their hands by virtue of such trust, and to manage, pay and deliver over such property to said minors and others, in the same manner and under the same restrictions, obligations and duties as guardians are now by law obliged to do.

Trustees refusing to give bond, how to be proceeded with.

SEC. 60. *Be it further enacted*, That any trustee appointed either by the testator as aforesaid, or by the Judge of Probate, shall upon request in writing to the said Judge be permitted to resign the trust, first accounting for, and paying and delivering over such estate as shall have come to his hands by virtue of such trust, to such other person as the said Judge shall appoint a trustee in his stead: *Provided always*, That no such resignation except in the case of an executor or administrator who shall succeed to such trust upon the decease of his testator or intestate, shall be accepted and allowed, unless it shall clearly appear to the said Judge to be expedient and proper.

Trustees in certain cases may resign.

SEC. 61. *Be it further enacted*, That in case any person who has been, or shall be appointed a sole trustee; or any two or more persons, who have been or shall be appointed joint trustees in any last will, no provision being therein made for perpetuating such trust, and such sole trustee or any one or more of such joint trustees shall decline the acceptance of the trust, or shall die either before or after having accepted

In certain cases of vacancy of one or more trustees by death or otherwise, Judge to appoint others in their places.

the trust, or shall neglect or refuse to comply with the provisions of this Act; the respective Judges of Probate shall, after notice to the cestui que trusts, appoint one or more suitable persons to be trustee or trustees in the place of the trustee or trustees, so dying or declining to accept as aforesaid; and any trustee or trustees appointed by the Judge of Probate shall be holden and bound by the provisions of this Act, in the same manner as if he or they had been so appointed in and by such last will; and the estate, so given in trust by such last will shall vest in the trustee or trustees so appointed by the said Judges of Probate, in like manner to all intents and purposes as the same vested in the original trustee or trustees under such last will.

Judge may remove trustees, whenever disqualified, or unsuitable, and appoint others.

Trustees so substituted to give bond, &c.

Sec. 62. *Be it further enacted*, That when any trustee, appointed either by any testator or by any Judge of Probate, shall, in the opinion of the Judge of Probate, be disqualified for the discharge of the trust, by becoming *non compos mentis* or otherwise incapable or evidently unsuitable for the execution of such trust, it shall be lawful for the said Judge, after notice to such trustee, and the parties interested in the trust estate to remove such trustee, and to appoint and substitute another in his stead. And whenever any person shall be appointed and substituted as a trustee by the Judge of Probate as aforesaid in the place of any former trustee, who may either have been removed from office or have deceased, or have declined or resigned the trust as aforesaid, the person so appointed and substituted by the said Judge, shall give bond with sufficient surety or sureties, and shall be held to perform all the duties prescribed in the fifty eighth section of this Act: *Provided however*, That it shall be in the discretion of the said Judge to direct an inventory to be made and returned or not, by such new trustee, who in no manner whatever shall be deemed a trustee, or authorized to act as such, until such bond shall be given.

Judge to require new bonds, when sureties are insufficient, on application of persons interested—after giving notice:

Sec. 63. *Be it further enacted*, That whenever the sureties in any bond given to the Judge of Probate, shall be evidently insufficient for the purposes of such bond, the Judge of Probate, on the petition of any person interested, and after due notice to the principal and sureties on such bond, shall have authority to require from time to time new

bonds with sufficient surety or sureties in the case; and whenever any surety or sureties on any bond given to the Judge of Probate, shall, at any time after six years from the date of such bond, petition the Judge of Probate, that he or they may be discharged from any further responsibility upon such bond, the said Judge after due notice to all persons interested, may in their discretion discharge such surety or sureties from all further responsibility on such bond, and the said principal or principals shall in all such cases be required to procure other sufficient surety or sureties upon such bond, or upon a new bond to be given to the Judge of Probate for the purpose. And if such principal or principals shall not within such time as shall be ordered by said Judge, give such new bonds as may be required by virtue hereof; he, she or they shall be removed from their trust, and some other person or persons shall be appointed in his, her or their stead.

and may require new sureties, if sureties apply, &c. :

and remove from their trust such as do not comply with such order.

Sec. 64. *Be it further enacted*, That any person aggrieved at any order, sentence, decree, or denial of any Judge of Probate in any county, may appeal therefrom to the said Supreme Court of Probate: *Provided*, Such appeal be claimed within one month from the time of making such order, sentence, decree or denial, and bond be given and filed in the Probate office by the appellant, within ten days after such appeal shall be claimed and granted, for the prosecution thereof to effect, at the next Supreme Court of Probate, and for paying all intervening costs and damages, and such costs as the said Supreme Court of Probate shall tax against him. And such appeal shall be taken notice of, and proceeded upon at the next term of the Supreme Judicial Court, which shall be holden next after the expiration of thirty four days after such appeal shall be made, within and for the county where such order, sentence, decree or denial was made; and the appellant shall file the reasons of appeal, in the Probate Court appealed from, within ten days after the bond is given, and shall serve the adverse party or parties with an attested copy of such reasons, fourteen days at least before the sitting of the said Supreme Court of Probate, at which the trial is to be had. And when it shall appear from the reasons of appeal, that the sanity of the testator, or the

Appeal allowed from all decrees, orders, &c. of Judge, to Supreme Court,

if claimed within one month, and conditions, &c. complied with.

When and how such appeals are to be prosecuted; and mode of trial, &c.

Persons licensed to sell real estate in such cases—to make oath;

form of their oath.

SEC. 69. *Be it further enacted*, That every executor, administrator, guardian or other person, who shall have or obtain a license from any Court according to law, for selling real estate of any person deceased, or under guardianship, shall, previous to fixing upon the time and place of the sale of such estate, take the following oath or affirmation before the Judge of Probate, or before some Justice of the Peace; whose certificate thereof shall be returned to the Judge of Probate, to wit: "I A. B. do solemnly swear, (or affirm as the case may be) that in disposing of the estate lately belonging to _____, now deceased, (or under guardianship as the case may be) I will use my best skill and judgment in fixing on the time and place of sale; and that I will exert my utmost endeavours to dispose of the same in such manner as will produce the greatest advantage to all persons interested therein; and that without any sinister views whatever."

Suits on bonds to Judge of Probate to be brought in Supreme Judicial Court, and to be endorsed, for whose benefit, &c.

SEC. 70. *Be it further enacted*, That all suits brought in the name of any Judge of Probate upon a probate bond of any kind shall be originally commenced in the Supreme Judicial Court held within or for the county in which the said Judge of Probate shall belong. And the writ in addition to the usual endorsement of the name of the plaintiff or his attorney, shall also have the name of the person or persons, for whose particular use and benefit the suit is brought written thereon.

In suits on such bonds, when principal is out of State and not served with the process, Court may continue the suit, &c.

SEC. 71. *Be it further enacted*, That when any suit shall be brought on a probate bond, and the principal named in the bond is living and resident within this State, and shall not be named in the writ, or if named, shall not be attached or summoned to answer thereunto, it shall and may be lawful for the Court, at the request of the surety or sureties that may be attached or summoned thereby, to continue the same cause to the next term, or to some distant day in the same term, if, upon a consideration of the circumstances attending the suit, they shall determine such continuance reasonable or expedient; to the end such surety or sureties may purchase out a writ in such form as the same Court shall direct, for attaching the property, securing the person or summoning the principal to come in and become a party to the

suit; and in case the principal (after being attached or summoned upon such process fourteen days or more, prior to the time of his being directed to appear and answer) shall not appear and answer, the Court are hereby authorized and empowered to render judgment against him in the same way and manner they might have done, had such principal been duly named and legally summoned by the original writ which commenced the suit, and he had neglected to appear, or appearing had neglected to make answer thereto.

Judgment how to be rendered.

Sec. 72. *Be it further enacted*, That when the suit is instituted at the desire of a creditor of the deceased, such creditor must first have his debt or damages ascertained by judgment of Court, and likewise make it appear that a demand has been made of the administrator therefor; and that the administrator has refused or neglected to satisfy the same; or to show goods or estate of the deceased for that purpose.

Preliminary proceedings necessary when suit is to be instituted on Probate bond for benefit of creditor.

When the estate is insolvent, the creditor must produce a copy of the order of distribution of the estate of the deceased among the creditors, particularly specifying each creditor's claim, and the dividends they are severally entitled unto; and that a demand has been made of the administrator for his particular dividend, or the copy of a judgment recovered against the executor or administrator pursuant to the provision contained in the twenty-eighth section of this Act.

—when for creditor against insolvent estate.

When an heir has the suit brought for his part of the personal estate, he must exhibit a copy of the decree of the Probate Court, ascertaining its quantum; and that he has made a demand thereof upon the administrator. And when the

—when for heir for his distributive share.

administrator shall refuse or neglect to account upon oath for such property of the intestate as he has received, after he has been cited by the Judge of Probate for that purpose, execution shall be awarded against him for the full value of

Execution how to be awarded against administrator refusing to account for property of intestate.

the personal property of the deceased that has come to his hands, without any discount, abatement or allowance for charges and expenses of administration or debts paid. And in cases where any administrators shall have received the personal property of an intestate, and shall not have exhibited upon oath a particular inventory thereof, execution shall be awarded against him for such a part of the penalty of his administration bond, as the Supreme Court of Probate

—how to be awarded when administrator has received personal property not inventoried.

—recovery
how to be dis-
tributed.

Judgment and
proceedings
upon bonds in
other cases.

Manner and
form of judg-
ments on ad-
ministration
bonds.

shall, on full consideration of all the circumstances of the case, judge reasonable; to be distributed among the parties interested; agreeably to the directions of law. The like judgment and proceedings (so far as they can with propriety take place) are to be had upon bonds of executors, guardians and others, given to the Judges of Probate Courts in their said capacity.

SEC. 73. *Be it further enacted,* That when it shall appear upon a hearing in chancery on an administration bond, for whose particular use and benefit the money for which execution issues is to enure, the judgment shall be rendered, that the plaintiff in his said capacity (naming him) now have execution for being a part of the penalty forfeited and costs taxed at for the use of A. B. of C. in the county of S. (addition) a creditor or heir of E. F. deceased (as the case may be.) And the person to whose use judgment shall be rendered in the name of the Judge of Probate as aforesaid, may sue out execution thereon, and have the same levied on personal or real estate, as he may find it necessary, and shall be deemed and taken to be the creditor, to every intent and purpose whatever. And when there are several persons to whose use the monies recovered on an administration bond are to enure, there shall be as many separate and distinct judgments, in form aforesaid.

Proceedings
in suits on
bonds of trust-
tees.

SEC. 74. *Be it further enacted,* That any bonds given pursuant to this Act by any trustee, or trustees, may be put in suit by order of the Judge of Probate to whom the same shall have been given, for the benefit either of all or any of the minors or other persons interested in the estate given in trust as aforesaid; and the proceedings in such case shall be the same as in the cases of suits on other Probate bonds.

Penalty for re-
fusing to ap-
pear at Pro-
bate Courts af-
ter being cit-
ed.

SEC. 75. *Be it further enacted,* That when any person shall be cited to appear as a witness before the Judge of Probate in any cause or hearing, and such person shall refuse to appear or give evidence, he or she shall be liable to the like penalty or damage as such person would be liable unto for refusing to appear or give evidence in any Circuit Court of Common Pleas.

[Approved March 20, 1821.]

CHAPTER LII.

An Act respecting Executors, Administrators and Guardians, and the conveyance of Real Estate in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That all the lands, tenements and hereditaments of which any person may die seized, in fee simple, or in fee tail general or special, and also all such estate which he had fraudulently conveyed, or of which he had been colourably or fraudulently disseized with intent to defraud his creditors, shall be liable for the payment of his debts, and may be recovered and applied thereto in the manner by law directed.

What real estate of persons deceased shall be liable for payment of their debts.

SEC. 2. *Be it further enacted,* That when the goods and chattels belonging to the estate of any person deceased, shall not be sufficient to answer his just debts and legacies, upon representation thereof, and the same being made to appear to the Supreme Judicial Court in any county in this State, or to the Circuit Court of Common Pleas, in the county where the deceased person last dwelt, or in the county in which the said real estate lies, the said Courts are severally and respectively authorized to empower and license the executor, or administrator of such estate, to sell all or such part of the houses, lands or tenements of the deceased, as may be necessary to satisfy his just debts and legacies, with incidental charges and charges of administration. And every executor or administrator being so licensed and authorized as aforesaid may make and execute in due form of law, deeds and conveyances of such houses, lands and tenements, as they shall so sell, and such deeds and conveyances shall make as good a title to the purchaser, his heirs and assigns forever, as the testator or intestate had therein. And the executor or administrator previous to such sale, shall give thirty days' notice thereof by posting notifications in some public place in the town or plantation where the real estate lies, in two adjoining towns, and in the town where the testator or intestate last dwelt; or by causing an advertisement thereof to be published three weeks successively, in such newspaper as the Court, who may authorize the sale, shall

When personal estate is insufficient to pay debts, &c. license to sell real estate may be granted by Sup. J. Court, or C. C. Com. Pleas.

Executor or administrator being licensed, may execute deeds;

must give 30 day notice previous to sale.

Courts to order notice previous to granting license.

If partial sale of estate, for payment of debts, &c. would greatly injure the rest, Courts may authorize a sale of the whole by executors administrators, guardians, &c.

Notice to be given.

Bond to the Judge of Probate to account, &c.

order and direct: *Provided always*, That no such license shall be granted by either of the Courts aforesaid, until after personal notice or notice given by an advertisement for three weeks successively, in such newspaper as the Court shall order, to all persons, interested therein, of the time and place, at which they may be heard concerning the same: and if the said persons interested, or any of them shall give bond with sufficient sureties to pay such debts and legacies, with incidental charges, then such license shall not be granted.

Sec. 3. *Be it further enacted*, That whenever it shall be necessary that executors or administrators, shall be empowered to sell some part of the real estate of testators or intestates, or for guardians to sell some part of the real estate of minors or persons *non compos mentis*, for the payment of just debts, legacies or taxes, or for the support or legal expenses of minors or persons *non compos mentis*, and by such partial sale, the residue of such real estate would be greatly injured and the same shall be represented and made to appear to the Justices of either of the aforesaid Courts on petition, and declaration filed, and duly proved therein, by the said executors, administrators or guardians, the Justices of the aforesaid Courts respectively, may authorize and empower such executors, administrators or guardians, to sell and convey the whole, or so much of such real estate, as shall be most for the interest and benefit of the parties concerned therein, at public auction, and good and sufficient deed or deeds of conveyance thereof to make and execute; which deed or deeds, when duly acknowledged and recorded in the Registry of Deeds for the county where the said real estate lies, shall make a complete and legal title in fee to the purchaser or purchasers thereof: *Provided*, The said executors, administrators or guardians give public notice of such intended sale in manner and form herein before prescribed: *And provided also*, They first give bonds, with sufficient sureties, to the Judge of Probate for the county where the testator or intestate last dwelt, and his estate was inventoried, that he or she will observe the rules and directions of law for the sale of real estate by executors or administrators, and that the proceeds of the said sale, after the payment of just debts, legacies, taxes, and just debts for the support of minors, and

other legal expenses and incidental charges, shall be put on interest on good security, and that the same shall be disposed of agreeably to the rules of law.

SEC. 4. *Be it further enacted,* That the said Justices, where they may think it expedient, may examine the said petitioner or petitioners on oath, touching the truth of facts set forth in the said petition. And every representation made as aforesaid shall be accompanied with a certificate from the Judge of Probate of the county where the deceased person's estate was inventoried, certifying the value of the real estate, and the value of the personal estate of such deceased person, and the amount of his or her just debts; and also his opinion, whether it be necessary that the whole or a part of the estate should be sold, and if part only, what part.

Courts may examine petitioners for sale, &c. on oath.

Certificate required from Probate Court.

SEC. 5. *Be it further enacted,* That the guardian or guardians of any person or persons who shall spend or waste their estates by excessive drinking, gaming, idleness or debauchery, are hereby authorized and enjoined to pay the debts of such person or persons, and to provide for their maintenance and the support of their families out of their real estate, when their personal estate shall be insufficient, and for these purposes may sell so much of the real estate of their wards, as shall be necessary therefor, in the way and manner, and under the conditions, restrictions and limitations, under which executors and administrators are empowered to sell the estate of deceased persons; such guardians first obtaining a license therefor from the Supreme Judicial Court; or from the Circuit Court of Common Pleas of the county where the real estate shall be, who are hereby respectively empowered to grant the same: *Provided however,* That no such license be granted, unless the person applying for the same shall produce to the Court a certificate, under the hands of the overseers of the poor of the town, in which said idle, gaming person has gained a legal settlement, giving their consent and approbation of the sale of such a proportion of the real estate of such person as such overseers shall be satisfied is necessary to discharge the *bona fide* debts of such idle person, excluding all debts contracted by gaming.

Guardians of spendthrifts, &c. may be licensed to sell real estate for payment of their debts, and support, &c.

in what manner, &c.

Certificate of overseers to accompany petition for sale.

Supreme Judicial Court may authorize sale of whole of such spend-thrifts' real estate, when sale of part would greatly injure the rest.

Certificate of overseers of poor required in such cases.

Supreme Judicial Court may authorize sale of real estate of minors, in certain cases, and proceeds to be put on interest.

Bond to be given to Judge of Probate.

Certificate of Judge of Probate as to necessity of sale.

SEC. 6. *Be it further enacted,* That the Justices of the Supreme Judicial Court be, and they are hereby authorized and empowered to grant license to, and authorize guardians of persons given to excessive drinking, idleness, gaming or debauchery, to sell and convey the whole or so much of the real estate of such persons, as shall be most for their interest and benefit, when by a partial sale thereof, the remainder would be greatly injured, in the same way and manner, and under the same restrictions, as they are authorized to grant license to administrators, executors and guardians of minors and persons *non compos mentis*, to sell real estate in such cases: *Provided however,* That no such license shall be granted unless the certificate of overseers of the poor required to be produced, shall also contain their consent and approbation of such sale, and their opinion that by a partial sale of the real estate, the remainder thereof would be greatly injured.

SEC. 7. *Be it further enacted,* That when it shall fully appear to the Justices of the Supreme Judicial Court, aforesaid, by the petition and representation of the friends or guardians of minors interested in the real estate of any testator or intestate, that it would be for the benefit of such minors, or persons *non compos mentis*, that their interest therein should be disposed of, and the proceeds thereof be put out and secured to them on interest, the said Justices last mentioned, after a full examination on the oath of the petitioner or otherwise, may authorize some suitable person or persons to sell and convey such estate or part thereof, by deed or deeds duly acknowledged and recorded in the Registry of Deeds as aforesaid: *Provided,* Such person or persons first give bond with sufficient sureties, to the Judge of Probate for the county where the said deceased person last dwelt, to observe the rules and directions of law in the sale of real estates by executors or administrators in the second enacting clause herein prescribed, and to account for and make payment of the proceeds of the said sale, agreeably to the rules of law: *Provided,* That the said Judge of Probate shall certify that the whole or a part of the said estate is, in his opinion, necessary to be sold, and if part only, what part.

Sac. 8. *Be it further enacted,* That the Supreme Judicial Court, and the Circuit Court of Common Pleas be, and they are hereby authorized and empowered to grant license to, and authorize executors of the last will and testament, and administrators upon the estate of persons deceased, who resided out of this State owning real estate within the same, at the time of their decease; and also guardians of minors, persons *non compos mentis*, or persons given to excessive drinking, idleness, gaming or debauchery; such minors, or other persons not living within this State, but owning real estate within the same, to sell and convey such real estate lying within this State, in the same way and manner, and under such conditions, restrictions and limitations, as are herein provided by law, for the sale of real estate by executors, administrators and guardians, within this State; and all proceedings necessary to be had before any Judge of Probate within this State respecting such sale, shall be had before the Judge of Probate, within and for the county where such real estate may be situated.

S. J. Court and C. C. C. Pleas may license executors administrators and guardians, &c. to sell real estate lying within this State, of persons who lived out, &c.

Restrictions and limitations.

Sac. 9. *Be it further enacted,* That the bond, required by law, to be given to the Judge of Probate by executors, administrators and guardians, previous to the sale of real estate, shall and may be given to the Judge of Probate for the county in which the real estate is situated, in all cases, where the deceased person to whom such estate belonged, was not an inhabitant within this State, at the time of his decease.

Bonds on sale of real estate to be given to Judge of Probate for the county where estate lies.

Sac. 10. *Be it further enacted,* That whenever any executor, administrator or guardian, has been duly appointed and approved by any Judge of Probate, or any Court having Probate Jurisdiction in any other State, a certified copy of such appointment and approval, filed in any Probate office in this State, shall be sufficient evidence of such appointment and approval, and entitle such executor, administrator or guardian, to all the rights and powers incident to such appointment, as far as it respects the sale of real estate as aforesaid, which he might or could have, if he was appointed and approved as executor, administrator or guardian, by a Judge of Probate in this State.

What shall be evidence of appointment of executor, administrator or guardian by Courts of Probate out of the State.

Executor, administrator, &c. may adjourn sale, not exceeding 14 days.

SEC. 11. *Be it further enacted*, That any executor, administrator, guardian or other person, licensed by either of said Courts, to make sale of real estate, may adjourn such sale, if expedient, for any space of time not exceeding fourteen days.

Licenses for sale of real estate to be in force for one year, from time of granting.

SEC. 12. *Be it further enacted*, That no such license as aforesaid, for the sale of real estate, granted by either of the Courts aforesaid, shall be in force for a longer term of time than one year from the time when such license shall have been granted. And no action by any heir or other person, interested for the recovery of any real estate, sold under such license, shall be sustained, unless such action shall be brought within the term of five years after the execution and delivery of the deed given under such license: *Provided always*, That minors and other persons under legal disabilities, and persons out of the State, at the time of such sale, may maintain such action at any time within the term of five years from the removal of their disabilities, or from their return to the State, as the case may be.

Actions by persons interested to defeat such sales, limited to 5 years: excepting as to minors, &c.

And whereas it may be often necessary to enable the representatives of persons deceased, to perform the engagements entered into by such deceased persons for the transfer of real estate :

S. J. Court or C. C. Pleas may authorize executors or administrators to make deeds in order to complete or carry into effect, contracts or covenants made by their testators or intestates.

SEC. 13. *Be it further enacted*, That whenever it shall be represented and made to appear to the Justices of either of the aforesaid Courts, in form aforesaid, by any person or persons, contracted with by bond, covenant or other contract, under seal, that a testator or intestate in his or her life time, entered into such bond, covenant or contract, to convey some real estate to him or her, but was prevented by death ; and that such person or persons, contracted with as aforesaid, have, on his, her, or their part, performed, or stand ready to perform the conditions of such bond, covenant or contract, made with the said testator or intestate, the said Justices may, after due notice given to all concerned as aforesaid, in form aforesaid, and a full hearing had, grant license to, and empower the executors or administrators of such deceased obligor, covenantor, or contractor, to make and execute such conveyance or conveyances to such person or persons, contracted with as aforesaid, as it shall ap-

pear the said obligor, covenantor or contractor would by his bond, covenant or contract, be obliged to make and execute, in case he, she or they were living at the time of the performance of the conditions of the bond, covenant or contract by the contractees on their part, making reasonable allowances for any alteration, improvements or injuries, that may be made or done in the same estate since such contract was made, as the said Justices may award; which conveyance or conveyances when the instruments thereof are duly acknowledged and recorded in the Registry of Deeds for the county where such estate shall lie, shall be good and valid; and the monies or consideration paid for such estate, if not paid to the deceased contractor in his life time, shall be assets in the hands of the said executors or administrators, and be apportioned among the representatives of the deceased as other personal estate.

SEC. 14. *Be it further enacted,* That when it shall appear to the said Justices, on examination, that the said petition or petitions in any of the foregoing applications, are unreasonable, the said Justices may award costs to such respondents as shall appear and object thereto.

Courts may award costs to respondents when petitions &c. are unreasonable.

SEC. 15. *Be it further enacted,* That the affidavit of any executor, administrator, guardian or other person, who has been, or hereafter may be duly licensed to sell real estate, or of any person employed by any of them, taken within eighteen months, next following the sale of such real estate, and filed in the Probate Court, and recorded together with one of the original advertisements of the time, place and estate to be sold, or a copy of such advertisement, are hereby declared to be one mode of perpetuating the evidence that such notice was given, and also to make the originals or copies thereof, from the Register of the Probate Court, admissible evidence in any Court of law. And when the person employed by the executor, administrator or guardian to post up such notifications, or cause them to be printed as aforesaid, resides more than ten miles distant from such Probate Court, his deposition respecting that matter, taken before a Justice of the Peace, and filed in such Probate Court within eighteen months as aforesaid, shall have the same

Mode of perpetuating notice of sale of real estate, by executors, administrators & guardians, &c.

force and effect, as if the same was taken before the Probate Court.

Lands set off on execution to executors or administrators ; or recovered on foreclosing mortgage, to be for the use of widow and heirs : and may be divided as other estate, &c.

unless necessary to be sold for the payment of debts, &c.

Executors or administrators to receive money from persons entitled to redeem estate set off, &c. and to discharge and release the same.

Provide.

SEC. 16. *Be it further enacted*, That wherever any executor or administrator shall recover judgment for any sum of money, whereon execution shall issue, and lands, tenements, or hereditaments shall be set off to the said executor or administrator, in discharge of the said execution, the said executor or administrator shall be seized and possessed of the whole estate in the lands, tenements or hereditaments so set off to the sole use and behoof of the widow and heirs of the deceased intestate, or to the residuary legatee or legatees of the testator, as the case may be ; and the Court of Probate may make distribution of the same, as well as of lands and tenements mortgaged to testators or intestates, of which seizin and possession shall have been recovered by executors or administrators as of personal estate, accordingly ; unless the lands, tenements or hereditaments so set off on the said execution, or of which seizin and possession shall have been recovered, shall be necessary for the payment of debts, legacies, annuities or charges of administration ; and in that case, the said executor or administrator, having obtained license in manner as herein provided, shall have full right, power and authority to dispose and make sale of the whole or part of the lands, tenements or hereditaments aforesaid, subject however to the right of redemption, in case such sale be made before such right shall be extinguished.

SEC. 17. *Be it further enacted*, That after executors or administrators shall become seized and possessed of lands, tenements or hereditaments, by having the same set off in discharge of an execution as aforesaid, and before conveyance or assignment thereof in manner aforesaid, if the person, his heirs, executors, administrators or assigns, whose estate has been levied upon as aforesaid, shall within the time limited, redeem the same, the executors or administrators shall, in every instance, be entitled to receive the said redemption money, and are hereby authorized, empowered and directed to discharge the said estate, levied upon, by release, quitclaim, or other legal conveyance : *Provided*, That nothing in this and the sixteenth sections of this Act con-

tained, shall be construed to control any last will or testament, or any part thereof.

SEC. 18. *Be it further enacted,* That no executor or administrator shall be compelled in any Court of law to defend any suit that shall be commenced or instituted against him, in said capacity, within the term of twelve months next after his taking upon him that trust, unless the same shall be instituted for the recovery of a demand that will not be affected by the insolvency of the estate, or the suit shall be instituted for the purpose of ascertaining a claim that is contested. And all suits brought within one year as aforesaid (except for the purposes aforesaid) shall be continued at the plaintiff's expense, until that term from the time the executor or administrator gave bond in the Probate Court, for the faithful discharge of his trust, shall be fully expired, and in case the executor or administrator pay the demand, or will bring sufficient money into Court for that purpose, and there leave the same for the plaintiff's use, or shall make a legal tender thereof to the plaintiff within the year, he shall recover his costs.

No executor to be sued within 12 months—

unless, &c.

Proceedings in case of suits brought against administrator, within the year.

SEC. 19. *Be it further enacted,* That all writs of attachment and executions shall run only against the goods or estate of the party deceased, in the hands of executors or administrators, and not against their bodies; nor shall any executor or administrator be held to special bail upon mesne process, nor his own proper goods or estate be attached or his person be arrested or taken in execution for the debts or legacies of the testator or intestate, but upon suggestion of waste, founded on a return made by the Sheriff, that he could not find any goods or estate of the testator or intestate; in which case a writ commonly called *scire facias*, shall be issued out of the Clerk's office of the same Court, against such executor or administrator, and if upon said writ being duly served and returned, such executor or administrator shall make default of appearance, or coming in shall not show cause sufficient to the contrary, execution shall be adjudged and awarded against him, of his own proper goods and estate, to the value of such waste, where it can be ascertained; otherwise for the whole sum recovered, with interest thereon from the time when the first judgment was ren-

Writs and executions to run against goods and estate of party deceased—not against executor or administrator's body or estate.

Proceedings on suggestion of waste.

EXECUTORS, ADMINISTRATORS, &c.

dered; and for want of goods or estate, against the body of such executor or administrator.

Administrator
de bonis non,
may become
party to suit
commenced
by previous
administrator
or executor—

and have scire
facias to com-
plete judg-
ments, and
may perfect
executions,
&c.

and may bring
and defend
writs of error.

SEC. 20. *Be it further enacted*, That whenever any executor or administrator shall die, or be removed from office, during the pendency of any suit brought by, or against him, in said capacity, the same suit may be prosecuted by, or against any administrator *de bonis non*, who shall thereupon be appointed, and process may thereupon issue in due form of law, to compel any such administrator *de bonis non* to become a party to the suit; and if such administrator *de bonis non* shall, after due service of such process, neglect or refuse to become a party to the suit, judgment may be rendered against him in the same manner as if he had voluntarily defaulted or nonsuited. And when judgment shall be had in any suit in which an executor or administrator is a party, and such executor or administrator shall afterwards die or be removed from office, in such case a *scire facias* may be sued and execution taken out upon such judgment, either by or against any administrator *de bonis non*, who shall be thereupon appointed, and any execution, which may have duly issued upon such judgment, may be perfected by either of said parties respectively; and a writ of error to correct any errors in such judgment may be brought in manner prescribed by law, either by, or against such administrator *de bonis non*, in like manner as might have been by, or against the original executor or administrator who was a party to such judgment.

In case of
death of either
party after ap-
peal and be-
fore sitting of
Court appeal-
ed to, or be-
fore final judg-
ment, the ex-
ecutor or ad-
ministrator
may prosecute
and defend,
&c. if cause of
action survive.

SEC. 21. *Be it further enacted*, That in case of the death of any party, either the appellant or appellee, before the sitting of the Court appealed unto, or where any action or suit is or shall be depending either in the Circuit Court of Common Pleas, or in the Supreme Judicial Court in any County of this State, and it so happen that either party be taken away by death before final judgment, the executor or administrator of such deceased party, who was plaintiff, complainant or defendant (in case the cause of action doth by law survive) shall have full power to prosecute or defend any such suit or action from Court to Court until final judgment; and the defendants or appellees are hereby ob-

liged to answer to such actions accordingly; and the Justices of the Circuit Court of Common Pleas and Supreme Judicial Court respectively, before whom such causes are or may be triable and depending, are hereby empowered and directed to hear and determine all such causes, proceed to judgment, and award execution accordingly: and if it shall so happen, that the executor or administrator of the deceased, hath not suitable time in the judgment of the Court where such action or suit shall be pending, and doth by law survive as aforesaid, to prepare for managing the cause, or to become duly qualified to prosecute or defend the same; in such case it shall and may be lawful for the Court to suspend the hearing and trying thereof until the next term. And if by the verdict of a Jury, or by the default or neglect of the executor or administrator, in prosecuting or defending such suit, after the executor or administrator shall have appeared and undertaken in his capacity to prosecute or defend the suit, judgment pass against the executor or administrator, the Supreme Judicial Court and Circuit Court of Common Pleas are hereby respectively authorized, empowered and directed, to enter up judgment for or against the estate of the deceased in their hands and under their administration, as the case may require.

Court may continue such actions in certain cases.

Judgment how rendered in such cases.

Sec. 22. *Be it further enacted,* That all actions pending in the Supreme Judicial Court or in any Circuit Court of Common Pleas in this State, by appeal, continuance or otherwise, where the plaintiff or defendant, appellant or appellee, complainant or respondent shall die before final judgment, and the executor or administrator of the deceased party, after taking upon himself the said trust, shall neglect or refuse to become a party to the suit, the Court before whom such cause shall be pending, in case the cause of action does by law survive, may enter up judgment against the goods and estate of the deceased party, in the same way and manner judgment might have been, in case the executor or administrator had voluntarily after such death made himself a party to the suit: *Provided always,* That such executor or administrator be duly served with a notification from the Clerk of the Court where such suit is pending, fourteen days before the sitting thereof.

When executor or administrator refuses to become party to suits, in cases aforesaid, what proceedings shall be had.

Executor or administrator to be duly notified.

Executors and Administrators not bound to plead specially.

SEC. 23. *Be it further enacted,* That executors, administrators and guardians shall not be compelled to plead specially to any action or suit at law, brought against them in their said capacity; but may under the general issue give any special matter in evidence.

Mode of levying executions on estates of persons deceased,

SEC. 24. *Be it further enacted,* That the real estate of any testator or intestate is and shall be liable to be taken and levied upon by any execution issuing upon judgments recovered against executors or administrators in such capacity, being the proper debts of the testator or intestate, and that the method of levying, appraising and recording, shall be the same as by law is provided respecting other real estate levied upon and taken in execution, and may be redeemed by the executor, administrator or heir, in like time and manner.

and of redeeming such estate.

Estate, &c. of deceased debtor on joint contract to be liable, as if joint and several, for payment of such contract, &c.

SEC. 25. *Be it further enacted,* That the goods and estate of each deceased debtor in every joint contract, whether obligation, covenant or other instrument under seal, promissory note, memorandum in writing, or any other contract express or implied, or in any judgment on any contract, shall be liable in the hands of his executors and administrators for the payment thereof, in like manner; and the creditor shall have the same remedy, and may have and maintain an action against such executors and administrators in the same manner as if such contract had been joint and several.

Actions against executors and administrators limited to 4 years.

SEC. 26. *Be it further enacted,* That no executor or administrator shall be held to answer to any suit that shall be commenced against him in that capacity, unless the same shall be commenced within the term of four years from the time of his accepting that trust: *Provided,* Such executor or administrator shall give public notice of his appointment to that office in the manner directed by law, and filing a claim with the commissioners upon an estate represented insolvent, shall be esteemed equivalent to originating a suit against executors or administrators, within the meaning of this Act.

Provided notice of appointment be given according to law. What shall be equivalent to originating a suit.

Provision for case of demand on contract, &c. not due until after

SEC. 27. *Be it further enacted,* That when any demand against the estate of any person deceased, arising from covenant, contract or agreement shall become due after the said term of four years, and which could not, by virtue of such

covenant, contract or agreement, be claimed until after the said term, in such case, the claimant may, at any time within the said term of four years, file such demand at the Probate office where administration was granted, or the will was approved; and the Judge of Probate shall direct the executor or administrator to retain in his hands assets (if sufficient there be) to answer said demand, unless the heirs to such estate, or devisees thereof, or some one or more of them, shall give good and sufficient security, in the opinion of the Judge of Probate, for such executor or administrator to respond such demand; and when security is so given, such executor or administrator shall not be allowed to retain in his hands assets for the purpose aforesaid; the estate of the said deceased shall however be liable, in the hands of the said heirs or devisees, or their heirs or assigns, to answer the said demand.

4 years; and
proceedings
therein.

SEC. 28. *Be it further enacted,* That where demands against the estate of any person deceased, arise by virtue of any covenant, contract or agreement that could not be claimed until after the said term of four years, the claimant in such case, unless he shall have filed the same in the Probate Court, as aforesaid, may have his remedy against those who inherit the estate of such person, or devisees thereof, against whom the demand lies, if such claim be made within one year from the time of its becoming due, and not against the executor or administrator: *Provided always,* That nothing in this Act shall operate to bar any action that may be commenced against an executor or administrator with the will annexed, for the recovery of a legacy, bequest, gift or annuity, arising, accruing or becoming due by virtue of any last will and testament, but the same may be commenced and prosecuted in the same time, way and manner, as they might have been, had this statute never been made.

When demands arise on covenant, &c. after expiration of the 4 years, they may be enforced against the heirs, if prosecuted or claimed within one year.

Proviso as to actions by devisees, legatees, &c.

[Approved March 21, 1821.]

CHAPTER LIII.

An Act to prevent Frauds and Perjury.

Enumeration
of promises,
void if not in
writing.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That no action shall be brought whereby to charge an executor or administrator, upon any special promise, to answer damages out of his own estate ; or whereby to charge the defendant, upon any special promise, to answer for the debt, default or misdoings of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any agreement that is not to be performed within the space of one year, from the making thereof; and no action shall hereafter be maintained upon any contract for the sale of lands, tenements or hereditaments, or any interest in, or concerning the same, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

All leases, &c.
not in writing,
to have no other
force or effect
than leases
or estates at
will.

SEC. 2. *Be it further enacted,* That all leases, estates, interests of freehold, or terms of years, or any uncertain interests of, in or out of, any messuages, lands, tenements or hereditaments, made or created by livery and seizin only, or by parole, and not put in writing, and signed by the parties so making or creating the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only ; and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect ; any consideration for making any such parole leases or estates notwithstanding. And no leases, estates or interests, either of freehold or term of years, or any uncertain interest of, in, to or out of, any messuages, lands, tenements or hereditaments, shall at any time, be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorized by writing, or by act and operation of law.

No leases, estates, &c. shall be assigned, granted or surrendered, unless by deed, or writing, signed by the party, &c.

SEC. 3. *Be it further enacted,* That no contract for the sale of any goods, wares, or merchandize, for the price of thirty dollars or more, shall be allowed to be good, except the purchaser shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized.

No contract for sale of goods for the price of \$30 or more good, unless in writing or partly executed.

[Approved March 8, 1821.]

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CHAPTER LIV.

An Act establishing a Supreme Judicial Court within this State.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That there shall be a Supreme Judicial Court within this State, to consist of one Chief Justice and two other Justices, each of whom shall be an inhabitant of this State, of sobriety of manners and learned in the law, to be appointed and commissioned as is by the Constitution provided, and they or any two of them, shall be a Court, and have cognizance of pleas real, personal and mixed; and of all civil actions between party and party, and between the State and any of the citizens thereof, whether the same do concern the realty, and relate to right of freehold, inheritance or possession, whether the same do concern the personalty, and relate to any matter of debt, contract, damage or personal injury; and also all mixed actions, which do concern the realty and personalty brought legally before the same Supreme Judicial Court, by appeal, review, writ of error, or otherwise; and in all such actions real, personal and mixed, to give such judgment, and award such execution, as the common rules of justice and the laws of this State shall direct; and shall take cognizance of all capital and other offences and misdemeanors whatsoever of a public nature, tending either to a breach of the peace, or the oppression of the citizen, or raising of faction, controversy or debate, to any manner of misgovernment; and of every crime whatsoever that is

Court established.

Jurisdiction, &c.

against the public good, and shall by virtue of their office, be severally conservators of the peace throughout the State. And upon all persons duly and legally convicted before the said Court, of crimes, offences or misdemeanors, to inflict such punishment as by the laws of the State is provided. And in case of legal conviction, where no punishment by statute law is provided, then the said Court shall punish the person so convicted, according to the common usage and practice within this State, not repugnant to the Constitution, according to the nature of the offence. And said Court are hereby invested generally with all the jurisdiction, power and authority, except in relation to the appointment of Clerks, and enjoined to perform all the duties, which by existing laws adopted by the Constitution, and not repugnant thereto, appertain and belong to the Supreme Judicial Court. And may issue all manner of writs, executions, certificates and processes whatever, for carrying into effect and authenticating any judgment, order or adjudication whatever, which may have been rendered in the late Supreme Judicial Court, in any county within this State, prior to the sixteenth day of March last; and all suits, writs, executions, certificates and processes, when so issued, shall be of the same effect, and be executed, levied and extended in the same manner, as if issued on any judgment, order or adjudication of the Court hereby created; and all records and documents of the late Supreme Judicial Court, now remaining in the several counties in this State shall be placed and remain under the control and authority of the Supreme Judicial Court of this State, in the same manner and for the same purposes as the records and documents of their own doings, and the Clerk of the same Court shall have the like power in relation to the one as the other of those records and documents.

May order the proceedings of inferior courts to be brought before them.

SEC. 2. *Be it further enacted,* That the same Supreme Judicial Court, may by certiorari or other legal methods, cause to be brought before them, as well indictments or other criminal prosecutions or civil proceedings pending in, as the records of sentence, orders, decrees, and judgments of any Court of inferior, criminal or civil jurisdiction, and to proceed, order and award thereon, as is or shall be by law provided and directed. And the said Supreme Judicial Court

is empowered to impose and administer all oaths, as well And administer oaths.
those that are necessary for promoting justice between party and party as those necessary to the conviction and punishment of offenders; and to punish at the reasonable discretion of the Court, all contempts committed against the And punish for contempts.
authority of the same; and the said Court shall have power to issue all writs of prohibition and mandamus, according to the law of the land, to all Courts of inferior judiciary powers, and all processes necessary to the furtherance of justice, and the regular execution of the laws.

SEC. 3. *Be it further enacted,* That all writs and processes of the same Court, shall be in the name of the State of Maine, Process to bear test of the first Justice.
bear test of the first Justice, who is not a party to the suit, and shall be under the seal of the same Court and signed by the Clerk.

SEC. 4. *Be it further enacted,* That the same Supreme Judicial Court, shall and may, from time to time, make, record, and establish all such rules and regulations with respect to the admission of Attornies and Counsellors, ordinarily practising in the said Court, and all other rules respecting modes of trial, and the conduct of business, as the discretion of the same Court shall dictate. *Provided always,* That such rules and regulations be not repugnant to the laws of the State. May make rules for the admission of attornies, &c.
Provide.

SEC. 5 *Be it further enacted,* That the Supreme Judicial Court shall be holden at York, in and for the county of York, on the second Tuesday of August next; at Portland, in the county of Cumberland, and for the counties of Cumberland and Oxford, on the fourth Tuesday of August next; at Augusta, in the county of Kennebec, and for the counties of Kennebec and Somerset, on the second Tuesday of September next; at Wiscasset, in and for the county of Lincoln, on the fourth Tuesday of September next; and at Castine in the county of Hancock, and for the counties of Hancock, Washington and Penobscot, on the second Tuesday of October next. And from and after the first day of April next, the said Supreme Judicial Court shall be holden in each year at York, within and for the county of York, on the last Tuesday of April; and at Alfred, in and for said county, on the fourth Tuesday of August; at Portland, in Terms of the court for the year 1820,
And after.

and for the county of Cumberland, on the first Tuesday of May ; and on the fourth Tuesday next following the third Tuesday of October ; at Wiscasset, in and for the county of Lincoln, on the third Tuesday of May ; and on the third Tuesday of October ; at Augusta, in and for the county of Kennebec, on the fourth Tuesday of May ; and on the third Tuesday of September ; at Norridgewock, in and for the county of Somerset, on the first Tuesday of June ; at Castine, in and for the county of Hancock, on the second Tuesday of June ; and on the second Tuesday of October ; at Machias, in and for the county of Washington, on the third Tuesday of June ; at Paris, in and for the county of Oxford, on the second Tuesday of September ; and at Bangor, in and for the county of Penobscot, on the first Tuesday of October. *Provided nevertheless*, That the Tuesday of the month, in which said Courts are respectively to be holden, at the said several times and places, may in all judicial proceedings, from time to time, be expressed and designated by such Tuesday of the month as will be the Tuesday on which the said Court is to be holden, pursuant to the foregoing arrangements.

Proviso.

Actions now
pending.

SEC. 6. *Be it further enacted*, That all actions and civil suits of every name and kind, which may be pending in the Supreme Judicial Court for the counties of Cumberland and Oxford ; or for the counties of Kennebec and Somerset ; or for the counties of Hancock, Washington and Penobscot, on the first day of April next ; which shall have been originally commenced in the Courts of Common Pleas for the counties of Oxford, Somerset, Washington or Penobscot respectively ; all petitions in which the petitioner may be an inhabitant of either of said counties, and all indictments against any person or persons for offences committed within either of said counties, shall be transferred and removed to, entered, heard, tried, and proceeded upon, at the Supreme Judicial Court, then next to be holden within the said counties of Oxford, Somerset, Washington and Penobscot respectively, within which the said actions originated and were commenced, the said petitioners reside, and the said offences may have been committed ; and all the papers and documents, belonging to all such actions, suits, petitions and

indictments, shall be delivered over to the Clerks of the said counties of Oxford, Somerset, Washington and Penobscot respectively. And all appeals which may be made from any Court of Common Pleas, and all recognisances which may be taken, and all offences which may be committed within either of the said counties of Oxford, Somerset, Washington and Penobscot, after the first day of the terms of the Supreme Judicial Court to be holden prior to the first day of May next, for the counties of Cumberland and Oxford, and for the counties of Kennebec and Somerset, and for the counties of Hancock, Washington and Penobscot respectively, shall be entered, heard, tried, prosecuted and proceeded upon, at the Supreme Judicial Court then next to be holden within and for the said counties respectively, where the appeals may be made, the recognisances may be taken, and the offences may be committed.

SEC. 7. *Be it further enacted*, That whenever by sickness, accident, or any unforeseen cause, the number of Justices required to hold Courts, as is herein provided, do not attend on the day appointed for opening a Court, any one of said Justices may adjourn the Court, from day to day, until a sufficient number of said Justices do attend; and when from sickness, accident, or any unforeseen cause, neither of the said Justices shall attend on the day appointed for opening a Court, the Sheriffs of the several counties respectively, shall have power to adjourn the Court from day to day, until a Justice shall attend.

One Judge may adjourn the Court.

SEC. 8. *Be it further enacted*, That when at any term of the Supreme Judicial Court holden or to be holden in any county, any actions shall have been continued *nisi* for advisement by the Court, or for argument by consent of parties, and the Justices of said Court shall have determined the same before the next term of said Court holden in the same county, it shall be lawful to enter judgment upon said actions as of the last term of said Court, at which said actions shall have been continued, or at the succeeding term. And whenever the Clerk of said Court in any county shall enter a judgment upon any action by order of the Justices of said Court out of term time, he shall enter upon his dock-

Judgment how to be entered in certain cases.

at the time when he shall receive such order, and all liens created by attachment on mesne process in said actions, shall continue and be in force for and during thirty days after the then next term of the Supreme Judicial Court for said county, any thing in the law to the contrary notwithstanding.

Reporter to be appointed.

SEC. 9. *Be it further enacted*, That the Governor, by and with the advice of the Council, shall, as soon as may be after the passing of this Act, appoint some suitable person, learned in the law, to be a Reporter of the decisions of the Supreme Judicial Court, who shall be sworn to the faithful discharge of his duty, and shall be removable at pleasure of the Executive; whose duty it shall be, by his personal attendance, or by any other means in his power, to obtain true and authentic reports of the decisions, which may hereafter be made by said Court, and shall publish the same whenever they will compose a suitable volume.

His salary.

SEC. 10. *Be it further enacted*, That the said Reporter shall receive out of the Treasury of this State, six hundred dollars annually, which together with the profits arising from the publication of his said reports, shall be a full compensation for his services aforesaid; and that the money, paid by persons admitted to practise as Attorneys in the Supreme Judicial Court shall be a fund for the payment of said sum: and if insufficient, to be paid out of any other monies in the Treasury not otherwise appropriated.

Act to be in force 3 years.

SEC. 11. *Be it further enacted*, That this Act shall continue in force during the term of three years from the passing the same and no longer.

[Approved June 24, 1820.]

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CHAPTER LV.

An Act to alter the times of holding the Supreme Judicial Court, and Circuit Court of Common Pleas, in the county of Cumberland.

Supreme Judicial Court.

Be it enacted by the Senate and House of Representatives in Legislature assembled, That from and after the first day of April next, the Supreme Judicial Court shall be holden at Portland, within and for the county of Cumber-

land, on the first Tuesday of May, and on the third Tuesday next following the third Tuesday of October in each year. And the Circuit Court of Common Pleas shall be holden at Portland, within and for the county of Cumberland, on the first Tuesday of March, the third Tuesday of June, and the second Tuesday of December, in each year. And all acts and parts of acts fixing the times of holding either of said Courts in said county, shall be, and they are hereby repealed.

Circuit Court
Common
Pleas.

[Approved March 21, 1821.]

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CHAPTER LVI.

An Act in addition to "an Act establishing a Supreme Judicial Court within this State."

BE it enacted by the Senate and House of Representatives in Legislature assembled, That in all actions, petitions, and civil suits pending before the Supreme Judicial Court, wherein any two of the Judges of said Court, have been of counsel for either party, or are otherwise interested in such actions, petitions or civil suits, one of the Justices of said Court, who has not been counsel or otherwise as aforesaid, shall have full power and authority to hear, adjudge, and determine said actions, petitions, and civil suits with or without the intervention of a Jury, as the parties may by their pleadings, or agreed statement of facts, render necessary according to law; any thing in the Act, to which this is an addition, to the contrary notwithstanding.

In certain cases, one Judge to have full power to hear and decide causes.

[Approved March 8, 1821.]

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CHAPTER LVII.

An Act defining the powers of the Judicial Courts in granting Reviews and for other purposes.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That whenever there shall have been any legal cause for any Judicial Court before judgment, to set aside any verdict, but nevertheless judg-

In cases when there have been good cause to set aside a verdict, a review may be granted,

on petition to
Supreme Ju-
dicial Court,

and after due
notice,

on such con-
ditions as may
be deemed
proper.

When by reason
of accident,
mistake, &c.
judgment has
been rendered,

S. J. Court
may grant a
review.

Court may
grant reviews
in all civil ac-
tions, when
they think it
reasonable.

In case of
judgments
rendered in
C. C. Com-
mon Pleas or
before Justice
under certain
circumstan-
ces.

Supreme Ju-
dicial Court
may grant re-
view of the
cause, on pe-
tition of party
injured ;

provided ap-
plication be
made within
3 years.

When review
is granted, a
writ of re-

ment shall have been rendered on such verdict, the party aggrieved by such judgment may petition the Justices of the Court, at any of their terms, for a review of such cause ; and the said Justices on due notice to the adverse party, and full consideration of such petition, are hereby empowered (if they see fit) to grant a review of the said cause on such terms and conditions as to them may seem just and reasonable between the said parties.

SEC. 2. *Be it further enacted,* That whenever by reason of any accident, mistake, or any unforeseen cause, judgment shall have been rendered on discontinuance, nonsuit, nil dicit, non sum informatus, report of referees, or default, or suits may have been discontinued without judgment, to the hindrance or subversion of justice, the said Justices, on petition as aforesaid, are further empowered to grant a review of the action. And the said Justices shall be, and they are hereby vested with discretionary power, to grant reviews in all civil actions, in manner as aforesaid, whenever they shall judge it to be reasonable, without being limited to particular cases.

SEC. 3. *Be it further enacted,* That whenever, by reason of any of the causes mentioned in the last enacting clause, any judgment in the Circuit Court of Common Pleas, or before any Justice of the Peace, may have been rendered in manner as in the same clause is mentioned ; or any appeal may have been prevented or lost to the hindrance or subversion of justice as aforesaid ; and the party aggrieved shall produce in, and file with the Clerk of the Supreme Judicial Court a copy of record of the cause duly attested, and shall petition the Justices of the same Court for a review of the cause, in manner as aforesaid, the said Justices may grant a review of the said cause in manner aforesaid to be heard and determined in the said Supreme Judicial Court: *Provided,* That application be made to the Justice of the said Court within three years after the rendition of the judgment complained of, and only one review shall ever be granted in any action by virtue of this Act.

SEC. 4. *Be it further enacted,* That whenever a review is granted by virtue of this Act, a writ of review shall be sued out and prosecuted to final judgment and execution. And

the party bringing such action of review, shall produce in Court attested copies of the writ, judgment and all papers used and filed in the former trial, and each party shall have the liberty to offer any further evidence; and the whole cause shall be tried in the same manner as if no judgment had been given thereon: and the former judgment may be reversed in whole or in part, or greater damages or less, or no damages may be given, as the merits of the cause upon law and the evidence shall appear to require.

view to be sued out and prosecuted: Proceedings in such action.

Former judgment may be reversed in whole or part, &c.

SEC. 5. *Be it further enacted*, That the Justices aforesaid to whom any petition shall be preferred in manner aforesaid, are further empowered to stay execution in the cause on such conditions as are before mentioned; and whenever the same Justices shall adjudge that the petitioner shall take nothing by his petition, they are also empowered to award the respondent his costs, and execution may be sued out accordingly.

Court, on granting a review may stay execution, on condition, &c

May grant costs to respondent.

SEC. 6. *Be it further enacted*, That whenever by reason of any accident, mistake or unforeseen cause, an appeal in a civil action or complaint may not be entered at the Supreme Judicial Court at the proper term of said Court for entering the same, the Justices of the same Court be, and they are hereby empowered, on the petition of the party, at their discretion, to order such appeal or complaint, to be entered at any other term of said Court, within the county where the judgment appealed from shall have been rendered; and to proceed to try the appeal or affirm the former judgment, with additional damages and costs, in the same manner as they might have done if the said appeal or complaint had been entered at the proper term for entering the same; and the said Justices are hereby vested with all the discretionary power respecting such appeals or complaints with which they are vested, in the cases of petitions for review mentioned in this Act: *Provided*, That no petition for entry of such appeal or complaint shall be sustained, unless such petition shall be exhibited to the Court within one year after the term at which such appeal or complaint ought to have been entered. *And provided also*, That no goods or estate attached, or bail given upon the original writ shall be affected by any thing done by force of this section; but the same

When by accident or mistake, &c. an appeal or complaint was not entered at the proper term, S. J. Court may order the entry at any other term,

and try the cause.

S. J. Court to have same discretionary powers as in granting reviews.

Proviso—petition must be presented within one year after the proper term.

Bail and property attached not to be affected by such proceedings.

shall remain discharged, notwithstanding the entry of any such appeal or complaint as aforesaid.

Power of C.
C. C. Pleas as
to appeals
from Justices'
complaints,
defaults, and
judgments by
mistake, &c.

SEC. 7. *Be it further enacted,* That every Circuit Court of Common Pleas within this State be, and they are hereby vested with the same powers respecting appeals made from judgments rendered by Justices of the Peace, and complaints for not entering the same; and also respecting all actions and suits before Justices of the Peace wherein the damage laid does not exceed twenty dollars, and wherein the defendant has been defaulted for want of actual notice of the suit, or by some other accident or mistake, with which the Justices of the Supreme Judicial Court are by this Act vested, respecting appeals from judgments rendered by Circuit Courts of Common Pleas, and complaints for not entering the same, and respecting the granting reviews in the certain other actions or suits before mentioned, wherein the defendant has been defaulted, or lost his law.

When a per-
son, whose
claim against
an insolvent
estate has
been rejected
by commis-
sioners, and
who by mis-
take, &c. has
omitted or
may omit to
give notice of
his intention
to sue at com-
mon law,

the Supreme
Judicial Court
on petition
may grant a
right to insti-
tute a suit, &c.

SEC. 8. *Be it further enacted,* That in all cases in which any person shall have presented any claim for allowance to any Board of Commissioners which may have been appointed by any Judge of Probate, to receive and examine the claims against the estate of any deceased person, which may have been represented insolvent, and such claim shall have been rejected by such commissioners, and a return of their doings made to the Judge of Probate, and the claimant, who has or may prefer such claim for allowance has by accident, mistake or otherwise, omitted to give notice, or shall hereafter omit to give notice at the Probate Office, within twenty days after the making of such return of the commissioners, that it is his or her intention to have such claim determined at common law, the Supreme Judicial Court, at any session thereof, holden in any county, upon such claimant's presenting a petition for relief, and making it to appear that he or she has reasonable grounds for expecting to support his or her claim, and that he or she has not lost his or right to institute a suit against the executor or administrator of such estate, and have such claim determined at common law, by his or her negligence, is hereby authorized and empowered after due notice to the adverse party, to grant such claimant a right to institute a suit for the recov-

ery of such claim against the executor or administrator of such insolvent estate, at the next Circuit Court of Common Pleas, to be holden in the county in which such executor or administrator dwells; and the same proceedings shall be had in such suit, as are by law provided in suits instituted by claimants for the recovery of claims against insolvent estates, which have been rejected by the commissioners appointed to receive and examine the claims against such estates: *Provided however*, That no such petition shall be sustained unless the same shall be presented within two years from the return of the report of such commissioners to the Judge of Probate and that the distribution of any insolvent estate which may have been made previously to the presenting of such petition and notice thereof to the executor or administrator of such estate, shall not be disturbed by the judgment which may be recovered in any such suit; nor shall the right to institute any such suit be granted to any claimant after four years shall have elapsed, from the time of granting administration on such estate.

Proceedings to be thereupon had, in such case.

Proviso—
Such application must be made within two years, &c.

Any previous distribution of estate, not to be disturbed, by after judgment. No such relief to be granted after the lapse of 4 years from grant of administration.

SEC. 9. *Be it further enacted*, That in all such cases where any married man shall have absented himself from this State abandoning his wife, and not making sufficient provision for her support or maintenance, the Justices of the Supreme Judicial Court are hereby authorized at any of the terms of the said Court, upon the application of any such wife, to empower and enable her during the absence of her husband from this State, and no longer, in her own name, to make and execute any contract either under seal or otherwise, and by deed to sell and convey any estate real or personal, of which at the time of such sale, she shall be seized or possessed in her own right; and to commence, prosecute and defend any suit in law or equity to final judgment and execution, in the same manner as if she was sole and unmarried; or the said Justices may grant to any such wife any or all the powers above described according as they shall judge the circumstances of such wife shall require.

Sup. J. Court may license a married woman, whose husband has abandoned her, to sell any of her real or personal estate during his absence;

and to prosecute and defend actions as a feme sole, &c.

If husband return while contracts of his wife are in force, he to be liable thereon.

SEC. 10. *Be it further enacted*, That if any such husband should return into this State while any contract made by his wife, pursuant to the powers aforesaid should remain un-

No suit where the wife is a party, in such case, to abate by his return.

discharged, the same remedy shall lie against such husband, as if the contract had been made by her before the marriage; and no suit pending, where his wife shall be a party, pursuant to the said powers, shall abate by his return into this State.

Court to give notice, &c. before granting such powers to wife,

as in cases of libel for divorce.

SEC. 11. *Be it further enacted*, That when application shall be made by any wife for any or all of the powers aforesaid the Justices of the said Court, shall previous to their granting any of the powers aforesaid, cause such public notice of the said application to be given as by law they are directed in case of any libel filed by any married woman for a divorce.

[Approved March 15, 1821.]

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CHAPTER LVIII.

An Act extending the powers of the Justices of the Supreme Judicial Court, in certain cases.

Persons acquitted on trial in Sup. Jud. Court, on ground of Insanity, &c. may be committed to prison until restored to reason, &c.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That whenever any person who may have been arrested and in custody, or in prison, to answer for any crime or crimes, offence or offences, before the Supreme Judicial Court, shall be acquitted thereof by the Jury of trials; or shall not be indicted by the Grand Jury, by reason of the insanity or mental derangement of such person, and the discharge, or going at large of such person shall be deemed by the same Court to be dangerous to the safety of the citizens, or to the peace of the State, the said Court be, and hereby is authorized and empowered to commit such person to prison, there to be detained till he or she be restored to his or her right mind, or otherwise delivered by due course of law. And every person so committed shall be kept at his or her own expense, if he or she have estate sufficient for that purpose; otherwise at the charge of the person or town, upon whom his or her maintenance would have been legally chargeable, if he or she had not been committed as aforesaid.

At whose expense.

If no indictment is found by Grand Jury,

SEC. 2. *Be it further enacted*, That whenever the Grand Jury, upon any inquiry which they may hereafter make as

to the commission of any crime or offence by any person, shall omit to find a bill for the cause aforesaid, it shall be the duty of such Jury to certify the same to the said Court. And whenever the Jury of trials, upon the general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be the duty of such Jury, in giving in their verdict of not guilty, to state that it was for such cause.

nor conviction by Traverse Jury for such cause, they shall so certify to the Court.

SEC. 3. *Be it further enacted*, That any one of the Justices of the Supreme Judicial Court, or any two Justices of the Peace, *quorum unus*, within their county, may discharge from confinement any such person, when it shall be made to appear to his or their satisfaction, that the going at large of such person will not be dangerous to the safety of the citizens and to the peace of the State.

A Judge of the S. J. Court, or two Justices quorum unus may discharge a person so convicted, when it may be done safely.

SEC. 4. *Be it further enacted*, That upon the application of any friend or friends of such lunatic person, the Supreme Judicial Court, or any one of the Justices thereof, or any two Justices of the Peace, *quorum unus*, of the county in which such person may have been in prison, as aforesaid, be and are hereby authorized and empowered to commit to the custody and safe keeping of such friend or friends, such lunatic person: *Provided however*, That such applicant or applicants shall first give bonds, with sufficient surety or sureties, to the Judge of Probate for the county in which such lunatic is confined, conditioned for the safe keeping of such lunatic person, and for the payment of all damages which any person may sustain, by reason of the acts and doings of such lunatic; which bond shall be approved by the Court, Justice or Justices aforesaid, and may be put in suit for the benefit of persons interested, in like manner as is by law provided in case of probate bonds: *Provided*, That nothing in this Act contained, shall deprive any person of the benefit of the writ of habeas corpus.

S. J. Court, or any one of the Judges, or two Justices quorum unus, on application of friends of a lunatic may commit him to the custody of such friend—on bond being given, &c.

[Approved March 17, 1821.]

CHAPTER LIX.

An Act regulating Judicial Process and proceedings.

Mode of serving writs of attachment and summoning defendant.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That when the goods or estate of any person shall be attached at the suit of another, in any civil action, a summons in form prescribed by law, shall be delivered to the party whose goods or estate are attached, or left at his or her dwelling house or place of last and usual abode, fourteen days before the day of the sitting of the Court where such attachment is returnable; and if the defendant was not at any time an inhabitant or resident within this State, or has removed therefrom, then such summons shall be left with his tenant, agent or attorney; and such service shall be made by the officer to whom the writ may be directed who shall return the same according to the precept thereof: and if such defendant shall not have a tenant, agent or attorney within the State, and his goods or estate shall be attached as aforesaid, the officer shall return the writ with his doings thereon; and such action being duly entered, the Court may order such notice to the defendant, as justice may require.

Mode of serving original summons, &c.

SEC. 2. *Be it further enacted,* That in all suits wherein the process is by original summons, as against executors, administrators or guardians, in ejectment, dower, scire facias, error, review, and all other civil actions wherein the law does not require a separate summons to be left with the defendant, the service thereof by the proper officer shall be good and valid in law, either by his reading the writ or original summons to the defendant, or by leaving a certified copy thereof at his or her house or place of last and usual abode, fourteen days before the same is returnable; and in all real actions, where the defendant or defendants in review live out of the State, so that the writ of review cannot be served upon him or them, the service of such writ upon the tertenant or person in possession shall be deemed a good and sufficient service, and the defendant or defendants shall be held to answer thereupon accordingly.

in writs of review, where defendants are out of State.

SEC. 3. *Be it further enacted,* That in all actions where-
in the process shall be by original summons as aforesaid,
and the defendant was at no time an inhabitant or resident
within this State, or has removed therefrom, then the ser-
vice thereof shall be in like manner by the proper officer's
reading the same to, or leaving a like copy duly attested
with the tenant, agent or attorney of the defendant, the like
number of days before the day of the sitting of the Court
whereto the same process shall be returnable; and if such
defendant shall not have a tenant, agent or attorney within
the State, the Plaintiff or demandant may enter his action
and the Court may order notice to the defendant in the
manner provided in the first section of this Act.

Mode of ser-
vice, when de-
fendant was
never an in-
habitant of
State, &c.

SEC. 4. *Be it further enacted,* That in actions of dower
and other real actions, wherein the possession of land or
buildings shall not be demanded in the writ of the tenant in
the actual possession or occupancy thereof, in addition to a
service on the defendant in the writ or summons as afore-
said, there shall be a service on such tenant the like num-
ber of days before the day of the sitting of the Court by the
proper officer's reading to him or her the same writ or orig-
inal summons, or leaving a like certified copy at his or her
house or place of usual abode on the premises, which shall
also be certified by the proper officer; or the writ shall
abate.

In actions of
dower and
other real ac-
tions, sum-
mons to be
also served on
tenants.

SEC. 5. *Be it further enacted,* That when two or more are
jointly obligated by act of law or agreement, and one or
more of them are without the State, having property or es-
tate, but no tenant, agent, trustee or attorney within the same,
the property or estate of those so without the State, may be
attached, and the summons being left by the officer serving
the writ, with those within the State, shall be deemed a le-
gal service on those without the same: *Provided,* one con-
tinuance shall be granted, unless the plaintiff can show that
notice has been given to the person so out of the State, in
which case the Court may proceed at their discretion, with-
out granting a continuance.

Mode of ser-
vice of process
on joint con-
tracts, when
one or more
defendants live
out of the
State.

Continuance
to be granted
in case—

SEC. 6. *Be it further enacted,* That when a suit shall be
brought against any town, parish, or against the proprietors
of any common or undivided lands or other estate, the plain-

Mode of ser-
vice on towns,
proprietors,
&c.

tiff shall cause the Clerk of such town, parish or proprietors, or one or more of the Selectmen of such town, or assessors of such parish, to be served with a copy of the writ of summons, at least thirty days before the day of the sitting of the Court to which the same shall be returnable.

When none of the defendants are in the State at the time of service, nor return before the time of trial; what proceedings are to be had—

as to continuance—

judgment,

and execution.

Proviso as to plaintiffs giving personal notice to defendants, &c.

SEC. 7. *Be it further enacted*, That when a suit shall be brought, and no one of the defendants named in the writ, shall, at the time of the service thereof, be an inhabitant or resident within this State, or then be present within the same, and shall not return before the time of trial; or if the action shall be grounded on a tort, and any one of the defendants shall so be absent or not inhabitant or resident, and not return; then the court wherein such suit shall be pending, shall continue the same to the next term, on a suggestion of the fact being made on the record. And if the defendant, whose absence was noted on the record, shall not then appear by himself or attorney and be so remote that the notice of such suit pending could not probably be conveyed to him or her during the vacation, the said Court may further continue the action to the next term, and no longer. And in such cases where judgment shall be entered up by default after one or two continuances as aforesaid, execution or writ of seizin shall be stayed and not issue until the plaintiff or demandant shall have given bond with sufficient sureties in double the value of the estate or sum recovered by such judgment, to make restitution, and to refund and pay back such sum as shall be given in debt or damages; or so much as shall be recovered upon a suit therefor, to be brought in one year next after entering up the first judgment; if upon such suit the judgment shall be reversed, annulled or altered; the security aforesaid to be no further answerable than for the recovery that shall be made on such suit, to be had within one year as aforesaid: *Provided nevertheless*, If any plaintiff or plaintiffs in any such suit shall at any time after the service of the original writ or summons as aforesaid, and thirty days before the term of said Court, in which judgment may be rendered in manner aforesaid, cause the defendant or defendants in the case (being out of this State) to be notified of such suit by serving him or them with an attested copy of such writ or summons, and the off-

ger's return thereon, and shall file in said Court the deposition of one witness, being an inhabitant of this State, that such copy of said writ or summons was left with said defendant or defendants, or at his or their last and usual place of abode, in such case the plaintiff or plaintiffs may have their writ of execution or seizin, in the same manner as though the said defendant or defendants had appeared in said Court and made answer in said action, without such bond being given in manner aforesaid: *Provided also*, That no real estate taken in execution, granted upon such first judgment shall be conveyed by such plaintiff or demandant, until the expiration of the said one year, or after a new trial brought within the said space of one year.

SEC. 8. *Be it further enacted*, That all original writs issuing out of the Supreme Judicial Court, or Circuit Court of Common Pleas, or from a Justice of the Peace, shall before they are served, be endorsed on the back thereof by the plaintiff or plaintiffs, or one of them, with his christian and surname, if he or they are inhabitants of this State, or by his or their agent or attorney, being an inhabitant thereof; and where the plaintiff is not an inhabitant of this State, then his writ shall be endorsed in manner aforesaid, by some responsible person who is an inhabitant of this State, provided that the Court may upon motion in consideration that the agent or attorney who endorsed the writ, is not of ability for the purposes hereafter mentioned, order that the plaintiff shall procure a new endorser, and such new endorser shall be held in the same manner as if the endorsement had been made before the writ was served, and unless the plaintiff shall procure such new endorser when directed thereunto by the Court, he shall become nonsuit, but no costs shall be awarded against him. And the plaintiff's agent or attorney who shall so endorse his name upon an original writ, shall be liable in case of the avoidance or inability of the plaintiff to pay the defendant all such costs as he shall recover, and to pay all prison charges that may happen where the plaintiff shall not support his action.

All original writs to be endorsed, &c.

New endorser in certain cases may be required.

Liability of endorsers.

SEC. 9. *Be it further enacted*, That when the plaintiff and defendant both live within the State, all personal or transitory actions shall be brought in the county where one of

In what counties actions must be commenced.

the parties lives. And when an action shall be commenced in any other county than as above directed, the writ shall abate, and the defendant shall be allowed double costs.

Where actions
against coun-
ty may be
brought,

and where ac-
tions in *favor*
of county may
be brought.

Where ac-
tions between
corporations
and counties
are to be
brought.

Where actions
by plaintiffs
against their
own counties
are to be
brought.

Where actions
by inhabitants
of one county
against inhab-
itants of ano-
ther, shall be
brought.

Actions to be
entered at C.
C. Com. Pleas
first day of
term.

SEC. 10. *Be it further enacted*, That any local or transitory action against the inhabitants of any county in this State, in their corporate capacity may be commenced and prosecuted to final judgment and execution, either in the county where the plaintiff in such action lives, or in the county against which the action shall be brought, at the plaintiff's election, and any local or transitory action in which the inhabitants of any county shall be plaintiffs, may be commenced and prosecuted to final judgment and execution, in the county where the defendant in such action shall live, unless the defendant shall be an inhabitant of the same county, in which case the action may be commenced and prosecuted in either of the adjoining counties.

SEC. 11. *Be it further enacted*, That when any corporation shall be a party in any action commenced by or against the inhabitants of any county in this State, in their corporate capacity the action shall be commenced and prosecuted to final judgment and execution, in one of the counties adjoining the county interested in the same.

SEC. 12. *Be it further enacted*, That any local or transitory action against the inhabitants of any county by any plaintiffs belonging to such county, shall be commenced and prosecuted to final judgment and execution in such county, or in an adjoining county at the plaintiff's election.

SEC. 13. *Be it further enacted*, That any local or transitory action by the inhabitants of one county against the inhabitants of another county shall be commenced and prosecuted to final judgment and execution in an adjoining county.

SEC. 14. *Be it further enacted*, That no action shall be entered at any Circuit Court of Common Pleas after the first day of the sitting thereof: *Provided nevertheless*, That where, by any inevitable misfortune or accident, the plaintiff shall be prevented from entering his action upon the first day of the sitting of the Court, he may upon making the same appear to the Court, enter his action at any time before judgment is given for cost to the defendant.

SEC. 15. *Be it further enacted,* That when any defendant shall be duly served with process, and return thereof shall be made into the Court where the same is returnable, and he shall not appear by himself, or his attorney, his default shall be recorded, and the charge in the declaration shall be taken and deemed to be true, and the Court shall thereupon give such damages as they shall find upon inquiry that the plaintiff shall have sustained, unless the plaintiff shall move to have a Jury to inquire into the damages, in which case the Court shall enter up judgment for such damages as the Jury shall assess: *Provided nevertheless,* That if the defendant shall come into Court at any time before the Jury is dismissed, and shall pay down to the adverse party the costs he has been at, thus far, or so much thereof as the Court shall judge reasonable, then the Court may admit the defendant to have the same day in Court, as if his default had never been recorded.

Defendant not appearing to be defaulted and damages assessed.

Default may be taken off, in case, on payment of costs.

SEC. 16. *Be it further enacted,* That no summons, writ, declaration, plea, process, judgment or other proceedings in the Courts or course of justice, shall be abated, arrested, quashed, adjudged insufficient or reversed, for any kind of circumstantial errors or mistakes, when the person and case may be rightly understood by the Court, nor through defect or want of form only; and the Court, on motion made, may order amendments, but shall not allow costs, or grant a continuance in consequence thereof.

Circumstantial errors, &c. may be amended on motion, &c.

SEC. 17. *Be it further enacted,* That when any plaintiff shall in any stage of his action become nonsuit, or discontinue his suit, the defendant shall recover his costs against him, and in all actions, as well those of qui-tam as others, the party prevailing shall be entitled to his legal costs.

On nonsuit, &c. party prevailing entitled to his costs.

SEC. 18. *Be it further enacted,* That in all actions of trespass, quare clausum fregit hereafter brought wherein the defendant shall in his plea disclaim all right, title and interest to the land in which the trespass is by the declaration supposed to be done, and the trespass be involuntary or by negligence, the defendant shall be admitted to plead a disclaimer, and that the trespass was done involuntarily or by negligence, and a tender or offer of sufficient amends for such trespass before the action brought; or the defendant

On plea of disclaimer, and that trespass was involuntary, defendant may tender amends,

or bring money into Court.

Proceedings in such case.

may have leave to bring money into Court to satisfy the damage the plaintiff has sustained; and in case the Jury shall not assess greater damages for the trespass than the money tendered, or brought into Court, the defendant shall recover of the plaintiff his reasonable costs.

In certain actions defendant may file account in offset;

time when and place where.

Defendant may recover any balance due him.

Regulation as to costs in certain cases.

In real actions defendant may disclaim in part or whole.

proceedings in such cases.

Heirs may join or sever in actions for inheritance descended from a common ancestor.

SEC. 19. *Be it further enacted,* That when an action shall be brought to recover a debt due on book accounts, an account stated by the parties, a quantum meruit, quantum valebat or for services done upon an agreed price, or upon simple contract or promise in writing not under seal, the defendant may file any account he hath in the Clerk's office seven days before the sitting of the Circuit Court of Common Pleas, where the action is brought, or if the suit is before a Justice of the Peace, the accounts shall be filed before the Justice four days before the day of trial, and upon the general issue give the same in evidence against the plaintiff's demand. And if upon the trial it shall appear that there is a balance due to the defendant he shall recover the same in the same manner as if he had brought his action therefor. And where a plaintiff shall at the same Court bring divers actions upon demands which might have been joined in one, he shall recover no more costs than in one action only,

SEC. 20. *Be it further enacted,* That when any person or persons shall be sued in ejectment, or other real action, for any lands, tenements or hereditaments, they shall be holden to answer for so much or such part of the premises demanded as they then hold or are in possession of which they shall distinguish and set forth by their plea, and disclaim the rest; and if any of them disclaim the whole, and the plaintiff cannot prove the defendant's possession of the premises, or any part thereof the defendant shall recover his costs.

SEC. 21. *Be it further enacted,* That in actions of waste, ejectment, or other real actions, where possession of the inheritance alleged to have descended, is the object of the suit, the heirs claiming under a common ancestor, may all or any two or more of them join therein, or each may prosecute for his particular share of such inheritance, and the same rule shall extend to joint tenants who are or may be disseized,

SEC. 22. *Be it further enacted,* That in all actions now depending or that may be hereafter depending in any Court within this State wherein the defence intended to be set up by the defendant, is or may be, that he was a Justice of the Peace, Sheriff, Deputy Sheriff, or Coroner or a town or parish officer, or some other officer, civil or military, and that the act or thing for which he is or may be sued, is or may be any act or thing done by him by virtue, or in the execution of his office, the defendant may plead the general issue, and give the special matter in evidence upon filing in the cause a brief statement of such special matter of defence within such time as the Court shall order, of which statement the plaintiff shall be entitled to a copy, or he may plead specially at his election.

Justices, Sheriffs, Coroners, &c. may in certain cases, on filing a brief statement, give special matter in evidence.

SEC. 23. *Be it further enacted,* That upon a judgment rendered in any Circuit Court of Common Pleas, that the defendant shall account, it shall be in the power of the party against whom such judgment shall hereafter be given, to appeal therefrom, if such party shall think proper, before the same Court proceed to appoint auditors; and in case no appeal shall be made from the first judgment, that the defendant shall account, an appeal from the final judgment after the cause has been before auditors, shall not entitle the original defendant to try the issue of bailiff or not bailiff before the Supreme Judicial Court, but the first judgment that the defendant shall account shall remain in full force, and he shall account accordingly; and in case the defendant shall not enter and prosecute his appeal from the first judgment the same upon complaint may be affirmed; and auditors may thereupon be appointed in the same manner they would have been in the Circuit Court of Common Pleas, had no appeal been made from the first judgment.

In actions of account defendant may appeal from interlocutory judgment, before appointment of auditors.

Proceedings when he does not so appeal.

SEC. 24. *Be it further enacted,* That when any person against whom judgment shall be given, that he shall account, shall unreasonably refuse or neglect to appear at the time and place assigned by the auditors, or after appearing, shall refuse or neglect to render an account, the auditors may certify such refusal or neglect to the Court from which their appointment issued; and the same Court may thereupon cause damages to be assessed, by a jury and enter up judgment for the damages so assessed, with reasonable costs,

When defendant shall refuse to appear before auditors—what proceedings may be had.

or they may render judgment against the defendant as upon default.

Auditors may be appointed in any action, when Courts deem it proper;

their report to be given in evidence to the Jury.

SEC. 25. *Be it further enacted*, That whenever in any action before the Supreme Judicial Court, or any Circuit Court of Common Pleas, it shall appear to said Courts that an investigation of accounts, or an examination of vouchers is necessary for the purposes of Justice between the parties, it shall be lawful for the said Courts to appoint an auditor or auditors, to state the accounts between the parties, and to make report thereof to the Court as soon as may be; and the report so made shall under the direction of said Court, be given in evidence to the Jury; subject, however, to be impeached by evidence from either party; and the said Court shall award reasonable compensation to such auditor or auditors, which shall be taxed in the bill of costs to be recovered by the party prevailing in the suit, as in other cases.

State Treasurer, county, town and parish Treasurers may sue and prosecute actions, &c.

SEC. 26. *Be it further enacted*, That the Treasurer of this State, the Treasurers of counties, towns, parishes, and other corporations, for the time being, be and hereby are authorized and empowered, in their own names and capacities, respectively to commence, and prosecute to final judgment and execution, any suit or suits at law upon any bonds, notes or other securities, which have been or shall be given to them or their predecessors in said capacity; and to prosecute to final judgment and execution, any suits which have been or shall be commenced by their said predecessors in said capacity during their continuance in office, and pending at the time of their removal therefrom.

Writ of review pending, if either party die, what proceedings are to be had.

SEC. 27. *Be it further enacted*, That if pending a writ of review between the original parties whether in a real or personal action, either of them shall die, his death shall, at the request of the attorney for either party, be entered upon the records of the Court, and the cause shall thereupon be continued, to the end the heirs at law of such deceased party or other person interested in the tenements in question, as aforesaid, or his executors or administrators may come into Court, and take upon them the prosecution or defence of the same suit to final judgment. And if after a reasonable time, according to the discretion of the Court,

granted for this purpose, neither of them shall appear as aforesaid, or appearing shall afterwards become nonsuit, or be defaulted, then the same proceedings and judgment shall be had therein, mutatis mutandis, as would have been had between the original parties.

SEC. 28. *Be it further enacted,* That whenever either of the parties to any judgment shall die before a review has been granted, the legal representatives of such deceased party may petition for such review or become parties to the same as respondents.

Legal representatives of party may petition for review in certain case.

SEC. 29. *Be it further enacted,* That in the administration of oaths in this State, the ceremony of lifting up the hand, as heretofore used, shall be practised, with such exceptions as to Mahometans and other persons, who believe that an oath is not binding, unless taken in their accustomed manner, as the several Courts shall find necessary in the execution of the laws.

Manner of administering oaths in Courts, &c.

SEC. 30. *Be it further enacted,* That no actions shall be sustained in any Circuit Court of Common Pleas within this State, where the damage demanded does not exceed twenty dollars, unless by appeal from a Justice of the Peace, saving such actions wherein the title to real estate may be concerned; and if upon any action originally brought before the Circuit Court of Common Pleas, judgment shall be recovered for no more than twenty dollars debt or damage; in all such cases the plaintiff shall be entitled for his costs, to no more than one quarter part of the debt or damage so recovered: *Provided always,* That where judgment shall be rendered upon the report of referees, full costs shall be taxed for the party recovering notwithstanding the judgment be under twenty dollars, unless a different adjudication respecting the costs shall be made by the report itself.

Actions not sustained in C. C. Com. Pleas where ad damnum does not exceed \$20.

Regulation as to costs in that Court when damage does not exceed \$20.

Proviso as to judgment on report of referees.

SEC. 31. *Be it further enacted,* That all penalties and forfeitures incurred under the provisions of any statute of this State, for the recovery of which no mode is prescribed, shall and may be sued for and recovered by action of debt in any Court proper to try the same.

Actions of debt to lie for penalties where no other provision is made.

SEC. 32. *Be it further enacted,* That all penalties and forfeitures given or limited by any Act of this State, in whole or in part to the use of this State, may be recovered by indictment in any Court proper to try the same.

Penalties may be recovered by indictment where State is interested.

Printed copies
of private Acts
and Resolves,
by authority,
good evidence
in Courts.

SEC. 33. *Be it further enacted,* That the printed copies of the private Acts and resolves of this State, which now are, or hereafter shall be printed by and under the authority of the Legislature of this State, shall be admitted as good evidence thereof in all Courts of law, without any further proof whatsoever.

Action of debt
may be
brought on
any judgment
rendered in
this State.

SEC. 34. *Be it further enacted,* That upon the judgment for debt, damages or costs, which has been, or which shall be rendered and recorded by any Court of record, or any Justice of the Peace of this State, and remaining in force and unsatisfied, an action of debt may be brought in the same Court, or before the same Justice where such record remains, or in any Court of record, or before any Justice of the Peace, holding Pleas for the county in which either of the parties to such judgment, their executors or administrators shall dwell and reside at the time of bringing such action, and proper to try the same. And such judgment may be certified by the Clerk, for the time being of the Court, or by the Justice of the Peace, with whom such record remains.

In what coun-
ty or court.

Action of debt
may be bro't
on judgment
rendered in
any other
State;

SEC. 35. *Be it further enacted,* That upon the judgment for debt, damages or costs which has been, or which shall be rendered and recorded by a Court of record in any other of the United States, or by a Court of record of the United States and remaining in force and unsatisfied, an action of debt may be brought in any Court of record of this State, holden for the county in which either of the parties to such judgment, their executors or administrators shall dwell and reside, or in which any valuable goods, credits, or estate of any debtor, in such judgment shall be found at the time of bringing such action: *Provided,* That such judgment shall be certified in the manner which is, or shall be prescribed by any general law of the Congress of the United States.

In what coun-
ty or court.

Judgment to
be certified ac-
cording to Act
of Congress.

In such action
interest to be
cast on dam-
ages and costs.

SEC. 36. *Be it further enacted,* That in the action of debt, which shall be duly maintained upon any judgment as aforesaid, lawful interest shall be allowed, as well upon the costs as upon the debt or damages, or the balance thereof due and recoverable, and judgment shall be rendered thereon accordingly.

Sec. 37. *Be it further enacted,* That all executions issued upon any judgment in civil causes, shall be made returnable at such times as are provided by the several laws of this State; and in all cases where a writ of execution shall issue, there shall be expressed therein the time and place when and where the same shall be returnable.

How executions are to be made returnable.

Sec. 38. *Be it further enacted,* That the Clerks of the several Courts within this State, may, and are hereby respectively empowered to grant summons for witnesses in civil causes, directed to the persons to be summoned. And if any person who shall be served with lawful process, or summons to testify, depose, or give evidence concerning any cause or matter depending in any of the Courts aforesaid, or before any Justice of the Peace, and who shall have a sum of money tendered to him which shall be equal to his legal fees for travel to the place where the Court is held, and one day's attendance, do not appear according to the tenor of the process or summons, having no reasonable let or impediment to the contrary, such person shall be liable to the action of the aggrieved party for all damages by him sustained by such default, and the Court or Justice of the Peace shall have power by attachment to bring such contemptuous witness into Court, or before him, and to fine him at discretion, not exceeding the sum of twenty dollars, and shall order him to pay the cost of such attachment.

Clerks may grant summons for witnesses in civil cases.

Penalty for witness not obeying summons, on tender of fees.

Amount to be tendered.

Court may issue attachment against such witness.

Sec. 39. *Be it further enacted,* That when any person in whose favour a judgment is given at the Circuit Court of Common Pleas, shall appeal therefrom, when an appeal is by law allowed, because the damages given are too small, he shall be entitled to a Jury at the Supreme Judicial Court to inquire into the damages, without any further notice to the appellee. And when in the Circuit Court of Common Pleas judgment shall be given either upon abatement or demurrer, the party against whom judgment is given, shall have the privilege of appealing, in case the action is appealable without any further proceedings had in the Circuit Court of Common Pleas. And all agreements for waving pleas, and for amendments, and for making new pleas at the Supreme Judicial Court made and entered upon the records

Appeal allowed from C. C. Pleas to Sup. Judicial Court.

Appeal may be from judgment on plea in abatement or demurrer.

Agreements for waving pleas, and for amendments, &c. to be binding.

of the Circuit Court of Common Pleas shall be binding on the parties throughout the whole process of the suit.

Indictment to be found in the county where death happened, though mortal wound were given in another county:

SEC. 40. *Be it further enacted*, That where any person shall be feloniously stricken, poisoned or injured in one county in this State, and die of the same stroke, poisoning or injury in another county thereof; that then an indictment thereof, found by the Grand Jurors of the county where the death shall happen, before the Justices of the Supreme Judicial Court there held, shall be as good and effectual in law as if the stroke had been given, or poisoning, or injury done in the same county where the party shall die, or where the said indictment shall be found.

So if mortal wound were given on high seas.

SEC. 41. *Be it further enacted*, That where any person shall be feloniously stricken, poisoned or injured, on the high seas and without the limits of this State, and die of the same stroke, poisoning or injury, in any county thereof, that then an indictment thereof found by the Grand Jurors of the county where the death shall happen before the Justices of the Supreme Judicial Court there held, shall be as good and effectual in law as if the stroke had been given, or poisoning or injury done in the same county where the party shall die.

Proceedings when a person indicted stands mute.

SEC. 42. *Be it further enacted*, That if any person shall be indicted of any offence against this State for which the punishment is or shall be declared to be death, and shall stand mute, or refuse to plead, the Court shall proceed to the trial of the person so standing mute in the same manner as if he or she had pleaded not guilty, and shall render judgment accordingly. And no person who shall be indicted for any such offence, shall be allowed to challenge peremptorily above the number of twenty persons of the Jury.

If the accused be acquitted of part of felony charged and convicted of residue.

SEC. 43. *Be it further enacted*, That when any person indicted of any felony, shall be by the verdict of the Jury of trials upon such indictment acquitted from part of such indictment, and convicted of the residue thereof, any such verdict may be accepted and recorded in the Court where such trial shall be; and thereupon such person so indicted, may be adjudged to be guilty of the offence, if any, which shall appear to such Court to be substantially alleged in and by the residue of such indictment, if the same shall amount

What judgment Court may render.

to a felony, and shall be sentenced and punished accordingly.

SEC. 44. *Be it further enacted*, That any person who shall be held in prison upon suspicion of having committed a crime for which he may have sentence of death passed upon him, shall be bailed or discharged, if he is not indicted at the second term of the sitting of the Supreme Judicial Court in the county where the crime is alleged to have been committed, when there are two terms a year in such county. And in such counties as have but one Supreme Judicial Court in a year, the defendant shall be bailed or discharged, if he is not indicted at the first term: *Provided*, Such person shall have been held in prison for the space of six months next preceding the day of the sitting of the Court. And when any person shall be held in prison under indictment, he shall be tried or bailed at the first term next after his indictment, if he demands the same, unless it shall appear to the Court that the witnesses, on behalf of the government, have either been enticed away or are detained by some inevitable accident from attending. And all persons under indictment for felony shall be bailed or tried at the second term after the bill shall be returned, if they demand it.

Persons in prison, on suspicion, to be bailed or discharged, unless indicted at second term where two Courts are held in the year, or at first term, if there be but one.

Provided he has been in prison six months.

If in prison and indicted, to be tried or bailed at first term, if demanded, after indictment found.

Persons indicted to be tried or bailed at second term.

SEC. 45. *Be it further enacted*, That in all informations to be exhibited, and in all actions or suits to be commenced against any person or persons, on the behalf of any informer, or on the behalf of the State, and any informer for or concerning any offence committed or to be committed against any penal statute, the offence shall be laid and alleged to have been committed in the county where such offence was in truth committed and not elsewhere, and if the defendant, in any such information, action or suit, pleadeth that he owes nothing, or that he is not guilty, and the plaintiff or informer in such information, action or suit, upon evidence to the Jury that shall try such issue, shall not both prove the offence laid in the said information, action or suit, and that the same offence was committed in that county, the issue shall be found for the defendant or defendants.

Informations and actions on penal statutes, on behalf of informer, or State and informer—where to be brought and tried.

SEC. 46. *Be it further enacted*, That if any information, suit or action, shall be brought or exhibited against any person or persons for any offence committed against the form

In such information or action defendant may

plead general
issue and give
special matter
in evidence.

of any penal law, on behalf of any informer, or on behalf of the State and any informer, it shall be lawful for such defendants to plead the general issue, and give any special matter in evidence to the Jury, which shall be as available to him or them, as if he or they had sufficiently pleaded the same matter in bar, or discharge of such information, suit or action.

No person to
be executed
but by warrant
from Supreme
Executive,
&c.

SEC. 47. *Be it further enacted*, That no person upon whom sentence or judgment of death shall be passed or given by the Justices of the Supreme Judicial Court, shall be executed in pursuance of such judgment, before the whole record of such proceedings or case be certified by the Clerk of the same Court, under the seal thereof to the Supreme Executive Authority of this State, nor until a warrant shall be issued by the said Supreme Executive Authority, under the great seal of this State, with a copy of the record thereunto annexed, directed to the Sheriff of the county wherein the trial of the person so convicted as aforesaid, was had, commanding the same Sheriff to cause execution to be done upon the person so convicted as aforesaid, in all things according to the judgment against him. And the Sheriff to whom such warrant shall be directed is hereby authorized and required to execute the same in due form of law.

[Approved March 19, 1821.]

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CHAPTER LX.

An Act respecting the Attachment of Property on Mesne Process, and directing the issuing, extending, and serving of Executions.

Attachment to
hold for 30
days after
judgment.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That all goods and estate attached upon mesne process for the security of the debt or damages sued for, shall be held for the space of thirty days after final judgment, to be taken in execution; and if the creditor shall not take them in execution within thirty days after judgment, the attachment shall be void. And the share or shares, or interest of any person in any turnpike, bridge, canal or other company which heretofore has been, or hereafter may be incorporated, with all the

Attachment of
shares in com-
panies to bind
the same and

rights and privileges appertaining to such shares, may be attached on mesne process, and taken on execution; and the attachment of such shares or interest on mesne process shall hold the same, and also all dividends growing due after such attachment, to respond the final judgment which may be rendered thereon, until the expiration of thirty days after the rendition of such judgment. And when any such shares or interest shall be attached on mesne process, or taken on execution without such previous attachment, an attested copy or copies of such writ of attachment or execution, shall, by the officer holding the same be left with the Clerk, Treasurer or Cashier of such company. And all rights in equity of redeeming lands mortgaged, reversions or the remainders, shall be liable to attachment upon mesne process and to be taken by execution upon judgment recovered for the payment of the just debts of the mortgager or owner; and when any right in equity of redeeming real estate which is mortgaged, shall be attached on mesne process, and pending the attachment such mortgaged real estate shall be redeemed by the mortgager, the attaching creditor shall have the same lien on such estate as though the attachment had been of the fee, and execution may be levied thereon accordingly.

growing dividends.

When attached or taken on execution copies to be left with Clerk, &c.

Rights in equity liable to attachment and execution.

In case of redemption attaching creditor to have lien on the fee of the estate.

SEC. 2. *Be it further enacted,* That the franchise and all the rights, privileges and immunities of any turnpike, bridge, canal or other company incorporated by law with power to receive toll so far as relates to the right of demanding and receiving toll, as well as all other corporate property, either real or personal, shall be liable to attachment on mesne process; and when such attachment shall be made or other service of a mesne process shall be made on any of the corporations aforesaid, the officer serving the same shall leave an attested copy of said process, and his return thereon with the Clerk, Treasurer, or some one of the directors of said corporation, thirty days at least before the day of the sitting of the Court to which the same may be returnable.

Franchises of turnpikes, &c. may be attached.

Copy to be left with Clerk, &c. 30 days before Court.

SEC. 3. *Be it further enacted,* That the party obtaining judgment in a civil action, in any Court of Judicature within this State, shall be entitled to have his execution thereon

Execution may issue 24 hours after

judgment, if
no appeal.

Executions
when returna-
ble.

Not to issue af-
ter a year
without a scire
facias,

or may have
action of debt
on the judg-
ment.

Officers to off-
set executions,

Provided par-
ties are in the
same capacity,

and that attor-

at any time after the expiration of twenty-four hours after judgment rendered, and within one year next after the entering up of such judgment: *Provided*, That there be no appeal granted. And execution issuing from the Circuit Court of Common Pleas, shall be made returnable within three months, unless the Circuit Court of Common Pleas shall sit within that time, and in that case it shall be made returnable to the next Court; and those issuing from the Supreme Judicial Court, shall be made returnable at the end of six months, unless the Supreme Judicial Court shall sit in the said county within that time, and in that case it shall be returnable to the same; and those issuing from a Justice of the Peace shall be made returnable within sixty days from the day of issuing them; and when such executions shall be returned without any satisfaction made, or satisfied only in part, the Clerk of the Court from whence, or Justice from whom such execution issued, shall, upon application of the creditor, make out an alias or pluries execution for the whole, or the remainder, as the case, may be, till the judgment shall be fully satisfied: but if the party shall neglect for the space of one year next after obtaining judgment, to take out his execution, or shall not within one year next after his execution shall be returned not satisfied, take out his alias or pluries, he shall sue out his writ of scire facias against the adverse party, to show cause, if any he hath, why execution ought not to be done; and upon his not showing sufficient cause, the Court shall award execution, for what remaineth, with additional costs; or the creditor may bring his action of debt on the judgment.

SEC. 4. *Be it further enacted*, That whenever it shall happen that any sheriff, coroner or other officer authorized by law to serve executions, shall at the same time have several executions wherein the creditor in one execution is debtor in the other, any such officer is hereby empowered and directed to cause one execution to answer and satisfy the other, so far as the same will extend: *Provided always*, That this Act shall not be construed to extend to any judgments or executions wherein the creditor in one execution is not in the same capacity and trust, debtor in the other: *And provided also*, That nothing in this Act shall be constru-

ed to affect or discharge the lien which any attorney has or may have upon any judgments or executions for his fees and disbursements, or to affect the rights of any person to whom or for whose benefit the same judgments or executions, or the original cause of action thereof may have been assigned, bona fide, and without fraud.

ney's lien for costs, and assignees rights shall not be impaired.

SEC. 5. *Be it further enacted*, That when any goods or chattels shall be taken to satisfy an execution issuing upon a judgment obtained, such goods or chattels shall be safely kept, by the officer, at the expense of the debtor, for the space of four days next after they are so taken; and if within that time, the owner shall not redeem the same by otherwise satisfying the execution, such goods and chattels shall be sold at public vendue to the highest bidder, having first been advertised by the posting up notifications of the time and place of sale, forty eight hours before the expiration of the four days in the town or place where the sale is to be; and the money arising upon such sale shall be applied to the paying charges and the satisfying the execution, and the officer shall return the overplus, (if any there be) to the debtor. And the officer who is possessed of the execution shall make return of the same with his doings therein, particularly describing the goods taken and sold, and the sum for which each article was struck off; and if any officer shall be guilty of any fraud in the sale or in the return, he shall be liable to the debtor to pay him five times the sum defrauded, to be recovered by action of the case.

Goods seized on execution to be kept 4 days before sale—

to be advertised 48 hours before sale—

officer to make particular return—

penalty for fraud therein.

SEC. 6. *Be it further enacted*, That an attested copy or copies of execution left with the Clerk, Treasurer or Cashier of any turnpike, bridge, canal or other corporation, and an advertisement of the time and place of sale being once published within said thirty days after judgment, shall be deemed a taking such shares or interests in execution, pursuant to the attachment on the original writ; and so many of said shares, or so much of said interest may be sold on said execution at public vendue to the highest bidder as shall be sufficient to satisfy the same, and the charges of the sale, after notice shall have been given of the time and place of sale in manner as hereinafter provided; and in case the officer

Leaving copy of execution with certain officers of corporations to be a taking on execution.

Shares, &c. to be sold at auction, after notice.

Copy of return

to be left with
officer of cor-
poration.

Certificates of
shares to be
given to pur-
chaser.

Mode of noti-
fying sale of
shares.

making the sale, or the purchaser or purchasers of any such shares or interest do cause an attested copy or copies of such execution, and the officer's return thereon to be left with such Clerk, Treasurer or Cashier, within fourteen days after the sale is completed, and pay for the recording of the same, such purchaser or purchasers shall be thereby entitled to such shares and interest, with all the privileges appertaining thereto, and the income and dividends which may have accrued or been made on the same subsequent to the attachment thereof on mesne process; and it shall be the duty of the proper officer or officers of such corporation, to issue to the purchaser or purchasers under such execution, such certificates as by the bye-laws and regulations of such corporation are the evidences of the shares or interest of a proprietor in such corporation.

SEC. 7. *Be it further enacted,* That in making sale of any such shares or interest, the officer holding the execution shall give notice in writing of the time and place of sale to the judgment debtor, by leaving the same at his last and usual place of abode, if within the county in which the said officer dwells, and public notice of the said time and place of sale, by posting up notifications thereof in one or more public places in the town or plantation where such sale is to be made, and also in one or more public places in the two adjoining towns, thirty days at least before the time of sale, and further shall cause an advertisement expressing the time and place of sale, and against whom such execution shall have issued on which such shares or interests have been taken, to be published three weeks successively before the day of sale, in some public newspaper printed in the county where the sale is to be made, if any such be therein printed, and in case no such paper is therein printed, then such advertisement shall be published in some public newspaper in the nearest county wherein a newspaper shall be published; and in case the judgment debtor has at no time resided, or does not then dwell in such county, the posting up such notifications, and publishing such advertisements in manner aforesaid shall be deemed sufficient notice of such sale; and in case the shares or interest so notified for sale, shall not for want of purchasers, be disposed of at the time ap-

pointed for sale, the officer shall adjourn the sale for a time not exceeding three days, and from time to time, until the sale shall be completed; and the surplus monies (if any there be) arising from such sale, beyond satisfying the contents of the execution and necessary intervening charges, the officer shall pay the debtor, or deposit the same with the treasurer or cashier of the corporation, for the benefit of the debtor and subject to his order.

Vendue may be adjourned for 3 days.

Surplus how to be disposed of.

SEC. 8. *Be it further enacted*, That whenever an officer, having a writ of attachment or execution against any person interested in any such company, shall exhibit to the Clerk or Cashier thereof, such writ or execution, and request a certificate from him of the number of shares or amount of interest owned by the debtor in such company, it shall be the duty of such Clerk or Cashier to give the said officer a certificate of the number of shares or amount of interest holden and owned by the debtor in such company, and therein express the numbers or other marks by which such shares or interest are distinguished; and in case such Clerk or Cashier shall refuse to make and deliver to the officer such certificate, or shall wilfully make and deliver a false certificate thereof, such Clerk or Cashier shall be liable to pay to the creditor the full contents of such execution, and the contents of the judgment which may be recovered by the plaintiff in such writ of attachment, and the same may be recovered by the judgment creditor in an action of debt, in any Court proper to try the same.

Clerk or cashier on request of officer, to give him certificate of shares owned by the debtor.

Penalty for neglect, &c.

SEC. 9. *Be it further enacted*, That whenever any judgment has been, or may hereafter be recovered in any Court of Law against any turnpike, bridge, canal or other company incorporated by law, with power to receive toll, the franchise of such corporation, with all the privileges and immunities thereof, so far as relates to the right of demanding and receiving toll, as well as all other corporate property, whether real or personal, shall be liable to the satisfaction and payment of such judgment, and may be taken and sold on execution at public vendue; the officer first giving notice of the time and place of sale, by posting up a notification thereof in any town or plantation, in which the Clerk, Treasurer or any of the Directors of said corporation

Franchise of corporation after notice, may be sold on execution.

Mode of giving notice.

may dwell, thirty days at least before the time of sale, and also by causing an advertisement, expressing the name of the creditor, the amount of said execution, and the time and place of sale, to be inserted three weeks successively in some public newspaper, published in any county in which either of the aforesaid officers of said corporation may dwell (if any such newspaper shall be there printed) the last publication to be at least four days before the day of sale.

Mode and effect of such sale.

Officer may give possession to purchaser.

Corporation may redeem within 3 months—

on what terms.

*Sec. 10. Be it further enacted, That in the sale of such franchise any person who will pay and satisfy said execution and all legal fees and expenses thereon, in consideration of being entitled to receive, to his own use, for the shortest period of time, all such toll as the said corporation may by law be entitled to demand and receive, shall be considered as the highest bidder, and the same shall be struck off to him accordingly; and the officer's return on said execution shall transfer to the purchaser all the privileges and immunities which by law belonged and appertained to said corporation, so far as relates to the right of demanding and receiving toll; and the said officer shall immediately after such sale, be authorized and empowered to deliver to said purchaser, possession of all the toll houses and gates belonging to said corporation, in whatever county the same be situated; and the said purchaser shall thereupon be entitled to demand and receive to his own use, all the toll which may accrue, within the time limited by the term of his purchase, in the same manner, and under the same regulations, as the said corporation was before authorized to demand and receive the same: *Provided however, That the said corporation shall in all other respects, retain the same powers, be bound to the discharge of the same duties, and liable to the same penalties and forfeitures as before belonged to and were required of them by law; and provided also, That if the said corporation shall, at any time within three months from the time of such sale, pay over or tender to said purchaser such sums of money as he may have paid in satisfaction of said execution with twelve per cent. interest thereon, in addition to the toll which he may have received, then the said franchise, and all the rights, privileges and immunities thereof, shall revert to said corporation, and shall in**

all respects belong and appertain to them, as if the same had not been sold as aforesaid.

Sec. 11. *Be it further enacted,* That whenever any damages have been, or may hereafter be assessed to any person or body politic, either by the report of a committee, or the verdict of a Jury, for any injury sustained in his or their property, by the doing of any of the corporations aforesaid; and the said damages shall remain unpaid for the space of thirty days after the final acceptance of such report or verdict, such person or body politic, upon petition to any Court, by which such report or verdict was accepted, shall be entitled to a warrant of distress against said corporation, for the damages so assessed and the interest thereon, together with his or their reasonable costs; and the officers to whom such warrant of distress may be delivered, may proceed to execute the same in the same manner as is herein before provided for the levying and satisfaction of executions.

Warrant of distress may be issued against corporation for damages assessed by committee or Jury—

to be served as executions.

Sec. 12. *Be it further enacted,* That the officer who may levy any execution or warrant of distress by virtue of the ninth, tenth, eleventh and thirteenth sections of this Act, shall be authorized to adjourn the vendue from time to time, not exceeding ten days at any one time, until the sale shall be completed.

In certain cases vendue may be adjourned 10 days.

Sec. 13. *Be it further enacted,* That the lands, tenements or hereditaments of any bank already incorporated or which may hereafter be incorporated by law, may be taken in execution, and sold at public vendue to the highest bidder; and in every such case, the officer who shall levy such execution shall be empowered to execute to the purchaser a good deed or deeds of any such lands, tenements or hereditaments; having first given notice of the time and place of sale at least fourteen days previous thereto, in two or more public places, in the town or place where such lands or tenements lie, as also in two adjacent towns; and all deeds and conveyances of any such lands, tenements or hereditaments duly executed as aforesaid; shall be good and effectual in law to transfer to the purchaser, his heirs and assigns forever all the right, title and interest therein, which belonged to said corporation; any law, usage or custom to the contrary notwithstanding.

Real estate of banks may be sold on execution after notice, &c.

Officer may give deed.

Mode of notice.

Real estate mortgaged to banks may be sold in same manner.

SEC. 14. *Be it further enacted,* That all the right, title, claim and interest of any bank now incorporated, or which may be hereafter incorporated by law, in any lands, tenements or hereditaments, which has been or shall be mortgaged for security of any debt due or assigned to such bank, shall be liable to be seized on any writ of execution issued on any judgment rendered, or which may hereafter be rendered by any Court of law within this State, and sold at public auction, in the same manner as is prescribed for the sale and conveyance of the real estates of such banks in this Act.

The debt secured by such mortgage shall pass by the officer's deed of the estate.

SEC. 15. *Be it further enacted,* That any debt secured by such mortgage, and due to such bank at the time of the sale of such mortgage, shall pass by the deed of conveyance executed by the officer who shall serve such writ of execution, and be completely, and to all intents and purposes transferred to, and vested in such purchaser; and such purchaser, or his legal representatives may in his own name maintain any action proper to recover such debt, or to obtain possession of such lands, tenements or hereditaments, which might have been maintained in the name of such bank, had no such sale been had; and the copy of such mortgage deed duly certified by the Register of Deeds for the county or district where such lands are situated, and where such mortgage deed shall be recorded, shall be considered prima facie evidence of such mortgage deed, and of the note or other obligation on which such mortgage is founded, and that the same were remaining due and unsatisfied at the time of the trial of such action; and it shall be the duty of the Cashier or Clerk of such bank, on reasonable request, to furnish such officer, who shall serve such execution, or the judgment creditor, with a certified copy of such note or other obligation, together with a copy of all the endorsements thereon, and a statement of all such payments as shall have been made thereon by such debtor; and whenever such debtor shall have paid to such purchaser the amount due on such note or obligation, he shall be forever discharged from such note or obligation.

Cashier or Clerk to give purchaser a copy of the note, bond, &c. and sum due on it.

After notice to bank of such

SEC. 16. *Be it further enacted,* That no gift, sale, transfer, conveyance or endorsement of such note or mortgage,

made by such bank, after notice to such bank and such debtor of the seizure thereof, on execution by such officer for the purpose of sale under this Act, shall have any validity, force or effect against such purchaser under such sale at auction, but the same shall be adjudged null and void, except only between such bank and such person to whom such bank shall make such gift, sale, transfer, conveyance or endorsement, their heirs, executors, administrators and assigns.

seizure, &c. no sale or transfer to be valid, except, &c.

Sec. 17. *Be it further enacted,* That all rights in equity of redeeming real estate mortgaged, shall be liable to be taken in execution upon judgment for the payment of the just debts of the mortgager or owner, and the officer having such execution is hereby authorized to make sale of the same at public vendue, and to make, execute, acknowledge and deliver to the highest bidder good and sufficient deed or deeds of any estate so sold, in manner as is hereinafter expressed. And the officer shall give notice in writing, of the time and place of sale to the debtor in person, or by leaving the same at his last and usual place of abode, and public notice of the said time and place of sale, by posting up notifications thereof in two or more public places in the town or plantation in which such mortgaged estate is situated, and also in one or more public places in two adjoining towns, thirty days at least before the time of sale; and further shall cause an advertisement of the time and place of sale to be published three weeks successively before the day of sale in some public newspaper printed in the county in which such real estate lies, if any such newspaper shall be there printed, and the notifications aforesaid, being given or posted up within the space of thirty days after judgment given, whereon such execution shall issue, the attachment shall hold the equity, attached as aforesaid, until the levy of such execution can be completed in manner hereinafter described. And in case the estate notified for sale as aforesaid, shall not be disposed of at the time and place appointed, the officer shall adjourn the vendue, not exceeding three days, and so from time to time until the sale shall be completed. And the surplus monies (if any there shall be) arising from such sale, beyond satisfying the debt, costs and necessary intervening charges, the officer shall return to the debtor.

Equities of redemption may be sold on execution.

Mode of giving notice.

Attachment to hold until sale.

Auction may be adjourned 3 days.

Disposal of surplus.

Deeds of officers to be effectual to pass the right.

Debtor may redeem within one year, paying, &c.

Possessory titles to real estate may be attached and sold on execution.

Redeemable in same manner as equities of redemption.

Surplus in officer's hands to be applied towards paying other executions in his hands.

Or if such surplus be attach-

SEC. 18. *Be it further enacted,* That all deeds made and executed as aforesaid, shall be as effectual, to all intents and purposes, to convey the debtor's right in equity aforesaid, to the purchaser, his heirs and assigns, as if the same had been made and executed by such debtor or debtors: *Provided,* That every such debtor shall have liberty to redeem the right in equity so sold, within one year next after the time of executing the deed or deeds thereof, in manner aforesaid, by paying the sum which may by such sale have been satisfied on such execution, with the interest thereof, deducting the rents and profits the purchaser or any under him may have received over and above the repairs and betterments made by the purchaser or any under him.

SEC. 19. *Be it further enacted,* That the estate, right, title or interest of any person, owned, holden or claimed in virtue of a possession, or improvement as expressed in "An Act for the settlement of certain equitable claims arising on real actions," shall be liable to be taken by attachment, on mesne process, and by execution. And when any such right, title, interest or estate shall be seized and sold upon execution, such notice shall be given, and such proceedings had, in every respect, as are required by law, in the sale of an equity of redemption; and the debtor, whose right, title, interest or estate, is so taken and sold, shall have the right of redeeming the same, within such time, and in such manner, as is provided in cases of sales of equity of redemption.

SEC. 20. *Be it further enacted,* That whenever an officer shall have in his hands any money arising from the sale of the shares or interest aforesaid, or from the sale of any equity of redemption, or personal property, more than sufficient to satisfy the execution or executions on which such shares or interests, equity of redemption, or personal property were taken and sold, such officer shall apply the same surplus money, or such part thereof as may be necessary to the payment of any other execution which he may have in his hands, unsatisfied against the same debtor, or which may be delivered to him before he shall have paid over such surplus money, any thing in this or any other law of this State to the contrary notwithstanding: *Provided however,* That if such share or interest, equity of redemption, or per-

sonal property, shall, before such sale, have been attached on mesne process, other than that on which such execution shall have issued, or shall have been taken on some other execution, and the said officer is duly notified thereof, he shall hold such surplus monies, subject to such attachment or execution, and shall apply the same to the payment of the execution which may issue on the judgment that may be rendered on such mesne process, and delivered to him within thirty days after the rendition of such judgment, or to the payment of the execution by which such shares or interest, equity of redemption, or personal property had been taken according to the priority in regard to time, of such attachment or taking in execution.

ed before sale, or taken on another execution, same to be held subject thereto.

SEC. 21. *Be it further enacted,* That whenever any Sheriff, or Deputy Sheriff shall make sale of any share or interest in an incorporated company, of any right in equity to redeem mortgaged real estate, or of any personal property, which shall before such sale, have been attached on mesne process, or taken on execution by a Coroner, and such Sheriff, or Deputy Sheriff is duly notified thereof in writing, he shall hold the monies in his hands, arising from such sale, subject to such attachment or execution, in the same manner as if he were authorized to serve the execution which shall have issued, or may issue on such mesne process, or on which said share or interest, equity of redemption, or personal property, may have been taken by said Coroner.

If second attachment or seizure be made before sale, by a Coroner, Sheriff on notice thereof must hold surplus for him.

SEC. 22. *Be it further enacted,* That said Sheriff or Deputy Sheriff, after being notified in writing by said Coroner, of the execution in his the said Coroner's hands, on which said share or interest, equity of redemption, or personal property, shall have been taken, or which issued on the mesne process whereon said share or interest, equity of redemption, or personal property had been attached, of the time of such attachment on mesne process, or taking on execution, and of the whole amount, including fees due on said execution, shall pay over to the said Coroner the amount due on said execution, or so much thereof as shall remain in his hands, after satisfying all executions, in his own hands on which said share or interest, equity of redemption, or personal property had been taken, or which issued on mesne

Sheriff, on notice to pay over such surplus to Coroner, &c.

process whereon said share or interest, equity of redemption, or personal property have been attached prior to the time of the attachment on mesne process, or taking on execution as aforesaid, by said Coroner.

In similar cases, coroner to hold and pay over surplus to a sheriff.

SEC. 23. *Be it further enacted,* That whenever any Coroner shall make sale of such share or interest, equity of redemption, or personal property, which shall, before such sale, have been attached on mesne process or taken on execution by a Sheriff or Deputy Sheriff, such Coroner shall be subject to the same duties and requirements, in relation to such Sheriff or Deputy Sheriff, as by the twenty first and twenty second sections of this Act, a Sheriff is, in like case subject to, in relation to a Coroner.

In similar cases, constable to hold and then pay over surplus to sheriff or coroner.

SEC. 24. *Be it further enacted,* that whenever any Constable shall make sale of any such share or interest, equity of redemption, or personal property, which shall before such sale have been attached on mesne process, or taken on execution by a Sheriff or Deputy Sheriff, or by a Coroner, such Constable shall be subject to the same duties and requirements in relation to such Sheriff or Deputy Sheriff, or Coroner as by the twenty first and twenty second sections of this Act, a Sheriff is, in like case subject to, in relation to a Coroner.

Shares held in companies to be attached & sold in no other manner than this Act provides.

SEC. 25. *Be it further enacted,* That the shares and interests held by any person or persons in any such company as aforesaid, may be attached on mesne process and taken and sold on execution, in the manner provided by this Act, and no other, any thing in the Act incorporating such company to the contrary notwithstanding.

In what counties certain proceedings may be had.

SEC. 26. *Be it further enacted,* That all proceedings under the authority of the second, ninth, tenth, eleventh and twelfth sections of this Act, may be had in any county in which either the creditor, or the President, either of the Directors, the Treasurer, or Clerk of said corporation may reside or dwell.

Mode of levying executions on real estate, in common cases.

SEC. 27. *Be it further enacted,* That when any person shall obtain judgment in any Court within this State, for any sum of money, and the person or persons against whom the judgment is, does not satisfy such judgment, and the creditor can find no personal estate to his acceptance,

wherewith to satisfy his execution, and shall think proper to levy his execution upon the debtor's real estate, then the officer to whom the execution is directed and delivered, shall cause three disinterested and discreet men, being freeholders in the county, one to be chosen by the creditor or creditors, one by the debtor or debtors, whose land is to be taken, if they see cause, and a third by the officer; and in case the debtor or debtors shall neglect or refuse to choose as aforesaid, after being duly notified by the officer, if the debtor be living in the county in which such land lies, the officer shall appoint one for such debtor or debtors, to be sworn before one of the Justices of the Peace of the same county, faithfully and impartially to appraise such real estate as shall be shown to them, who shall appraise the same, to satisfy the same execution with all fees, and shall set out such estate by metes and bounds, and the officer shall deliver possession and seizin thereof to the creditor or creditors, his or their attorney. And when the real estate of the debtor or debtors shall be held in joint tenancy, in coparcenary or tenancy in common with the real estate of other persons, then the said officer may extend execution of such debtor or debtors' real estate held as aforesaid, or part thereof, describing the same with as much precision as the nature and situation thereof will admit of, and give the creditor or creditors, his or their attorney, seizin and possession of such debtor or debtors' real estate held as aforesaid, or part thereof, to hold in common with the said other persons; which execution being returned with the doings thereon into the Clerk's office, and before such return into the Clerk's office or afterwards, and within three months, the same shall be recorded in the Registry of Deeds in the county where the land lies, shall make as good title to such creditor or creditors, his or their heirs and assigns, as the debtor had therein; saving always to widows their dower in all lands taken from their husbands by execution.

Levy to be recorded in 3 months in Registry of Deeds, and effect thereof.

Sec. 28. *Be it further enacted*, That when it so happens that the real estate extended upon cannot be divided and set out by metes and bounds as before prescribed, or by the description before mentioned, then execution shall be extended upon the rents of such real estate, and the officer

Execution may in certain cases be extended on rents and profits;

Tenant to at-
torn.

shall give seizin thereof to the creditor or creditors, his or their attorney; and also in case of extending execution on rents as aforesaid, shall cause the person in possession and improvement, to attorn and become tenant to such creditor or creditors, and to pay the rent to him or them accordingly; and upon refusal thereof, to turn the person so refusing out of possession and give seizin and possession of the same to the creditor to hold and enjoy the same until it shall be redeemed, as by this Act is provided: *Provided always*, That in such case it shall and may be lawful for any debtor or debtors, his or their executors, administrators or assigns, at any time before the debt with interest is fully satisfied, to tender and pay to the creditor or the tenant in possession under him, the full remainder of his debt, interest and charges, to be liquidated by three Justices of the Peace, and to recover the possession of the same in manner provided in this Act.

Right of re-
demption.

Mode of levy-
ing executions
on saw mills,
grist mills, &c.

SEC. 29. *Be it further enacted*, That whenever a creditor in execution, shall think proper to extend and levy the same on any saw mill, grist mill, or other mill, factory, mill privilege, or other real estate, which cannot be divided without prejudice to, or spoiling the whole, and where the whole of such saw mill, grist mill, or other mill, factory, or mill privilege, or other real estate, is not necessary for the satisfying of such execution, the same may be extended and levied in manner before prescribed, upon the same, or upon any undivided part thereof, which shall be sufficient to satisfy such execution; and in case the estate is so situated that the same cannot be set off by metes and bounds, the return upon the execution shall describe the whole estate, with as much precision as the nature of the case will admit; which execution being returned and recorded, in manner before prescribed, shall vest in such creditor in execution, as good and valid a title thereto as the debtor had therein, when the same was attached on mesne process, or taken in execution.

Debtor may
redeem real
estate taken
on execution
within one
year, paying,
&c.

SEC. 30. *Be it further enacted*, That when any tenement or lands in part or in whole, shall be taken in execution for debt, it shall and may be lawful to and for the execution debtor, his heirs or assigns, executors or administrators,

within the space of one year next following the extending execution thereon, to tender the creditor or those claiming under him, the debt for which the same tenement was taken, with interest from the time of the extending the execution, and the reasonable and necessary charges and disbursements laid out and expended thereon in repairing or bettering the same, over and above what the rents, profits and improvements thereof shall fall short of reimbursing such charges and interest, to be accounted for by the execution creditor, or those claiming under him, which disbursements, expenses, rents, profits and improvements may be settled by any three Justices of the Peace in the county where the land lies, at the charge and expense of the debtor, one to be chosen by the debtor, and the other by the creditor, if he shall see cause to choose one, otherwise they may be both chosen by the debtor, and the third by the two Justices so chosen by the parties, or one of them as above directed, and which third shall be chosen before the other two proceed to a consideration of the business; and if the creditor or the tenant in possession as aforesaid, upon having a tender made of the sum certified under the hands of the said Justices chosen as aforesaid, or either two of them, to be due to him upon the execution, shall refuse to execute a good and lawful deed of release to the debtor or his heirs, (in case of his decease) of the land or tenements so taken in his execution, the debtor or his heirs, executors or administrators who shall make such tender, may bring his action of ejectment against the creditor or the person claiming under him; and, upon lodging in Court the money tendered, shall recover the title and possession of the land as fully as the debtor held the same before the extending the execution upon it, together with his costs of suit: *Provided nevertheless*, That if the creditor, or the tenant in possession under him as aforesaid, shall, before the bringing the action, have offered the debtor or his heirs, executors or administrators, to make and execute such deed of release, and shall plead the same with disclaimer to the premises; then and in such case, upon the plaintiff's producing in Court the money so tendered, judgment shall be given for the plaintiff to recover possession of the lands so taken in execution, and defendant shall recover his cost.

Mode of settling amount of rents, profits, disbursements, &c.

Creditor on receiving payment to execute release to debtor of the estate,

or be removed from the possession by judgment of Court.

Executions
against manu-
facturing cor-
porations, if
not satisfied,

may be renew-
ed and satisfi-
ed by taking
the bodies of
any of the
members of
the corpora-
tion.

Attachments
of property not
dissolved by
death of either
party,

except in cases
of a represent-
ation of insol-
vency.

Executions in
the name and
for the use of

SEC. 31. *Be it further enacted,* That whenever any action shall be commenced against any manufacturing corporation that may hereafter be created or whenever any execution may issue against such corporation on any judgment rendered in any civil action and the said corporation shall not, before the day on which the said execution is returnable after demand thereof made upon the President, Treasurer or Clerk of such corporation by the officer to whom the writ or execution against such corporation has been committed to be served, show to the same officer sufficient personal estate to satisfy any judgment that may be rendered upon such writ, or to satisfy and pay the creditor the sums due upon such execution, then, upon such neglect and default, upon the issuing of an alias execution, the officer to whom such execution may be committed for service, may serve and levy the same writ and execution upon the body or bodies, and real and personal estate or estates of any member or members of such corporation; or upon the body or bodies, and upon the estate real and personal of any person or persons, who were members of said corporation at the time when the debt or debts accrued, upon which such writs or executions may have issued.

SEC. 32. *Be it further enacted,* That when any goods or estate are attached upon a writ or process which shall be pending, or may hereafter be pending in the Supreme Judicial Court or Circuit Court of Common Pleas, the same shall not be released or discharged by reason of the death of either party, but be held good to respond the judgment to be given on such suit or process in the same manner as by law they would have been if such deceased person had been living: *Provided always,* That where any estate attached as aforesaid, shall, by the executor or executors, or administrator or administrators of the same, be represented as insolvent, and a commission of insolvency shall thereupon issue; in all such cases attachments made as aforesaid shall have no force or efficacy after the death of the original defendant or defendants in the action.

SEC. 33. *Be it further enacted,* That upon any judgment in any Court of law in this State, in the name or for the use and benefit of this State, for any sum of money, a writ of ex-

ecution in common form shall issue, and be directed to the proper officer, and the lands of such judgment debtor may be taken on such execution and sold at public vendue to the highest bidder. And in every such case, the officer who shall levy such execution, may and shall execute to the purchaser a good deed of any lands so by him sold. And every such officer, before he shall proceed to sell any lands in manner above described, shall give notice in writing of the time and place of sale to the debtor in person, or by leaving the same at his last and usual place of abode, if he be an inhabitant of this State, twenty days before such sale, and shall also give public notice of the time and place of sale by posting up notifications in two or more public places in the town, plantation or township, within which such land may lie, thirty days at least before the time of sale, and shall likewise cause an advertisement of the time and place of sale to be published three weeks successively, in the newspaper employed by the State to publish the laws, and in a newspaper printed in the county where such land may lie, if any such there be, the last publication to be not less than six days before the time of sale. And the officer may, if he deem it necessary, adjourn such vendue not exceeding ten days at any one time, until the sale of such estate shall be completed: *Provided however,* That the judgment debtor shall have the same right to redeem the same, in the same time and manner, as judgment debtors in execution have, to redeem real estate set off on execution.

SEC. 34. *Be it further enacted,* That when hay in a barn, sheep, horses or neat cattle are attached on mesne process at the suit of a bona fide creditor, and are suffered by the officer making such attachment, to remain in the possession of the debtor, on security given for the safe keeping or delivery thereof to such officer, the same shall not by reason of such possession of the debtor, be subject to a second attachment, to the prejudice of the first attachment.

[Approved March 15, 1821.]

the State how
to be served.

Attachment of
certain arti-
cles, though left
in defendant's
possession, still
continued
valid.

CHAPTER LXI.

An Act concerning Foreign Attachment.

Persons who
are liable to
be summoned
as trustees.

Process to be
used by a cred-
itor in such
cases.

Mode of serv-
ing such pro-
cess under dif-
ferent circum-
stances.

Lien on princi-
pal's goods,
&c. created by
service of pro-
cess.

Writ to be re-
turnable in the
county where
trustees dwell;

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That any person or persons, body politic or corporate, entitled to any personal action, excepting detinue, replevin, actions on the case for slanderous words or malicious prosecution, or actions of trespass for assault and battery against any person or persons, or body politic or corporate; having any goods, effects or credits so intrusted or deposited in the hands of others, that the same cannot be attached by the ordinary process of law, may cause not only the goods and estate of the person, against whom such action lies, to be attached in his own hands and possession, but also all his goods, effects and credits, so intrusted or deposited, to be attached in whose hands or possession soever they may be found, by an original writ to issue under the seal of the Circuit Court of Common Pleas, signed by the Clerk, and attested by the first Justice of the said Court, not a party thereto, in the form prescribed by law. And the officer to whom such writ may be directed, shall serve the same by attaching the goods and estate of the principal of the value required, if so much can be found in his precinct, by reading the said writ to him, or by leaving an attested copy thereof at his last and usual place of abode, if he had been an inhabitant or resident within this State at any time within three years next before the suing out such writ, and by reading the same to each of the trustees, or by leaving an attested copy thereof, at such trustee's usual place of abode; and in case the principal has not been an inhabitant or resident as aforesaid, a service made on the supposed trustee or trustees, in manner aforesaid, shall be deemed a sufficient service; and the goods, effects and credits of the principal, in the hands and possession of his trustee or trustees at the time such writ was served upon him or them, shall stand bound and be held to satisfy such judgment as the plaintiff shall recover against the principal; and when the trustees, named in such writ, do all dwell in one county, such writ shall be

made returnable in the county where all the trustees dwell, but when the trustees do not all dwell in one county such writ may be made returnable in any county in which any of the trustees dwell.

if they dwell in different counties, then in the county where either of them dwell.

SEC. 2. *Be it further enacted,* That in all such cases it shall and may be lawful for the plaintiff or his attorney to insert in the process, which may have been served on one or more trustee or trustees, the name or names of any person or persons, in whose hands or possession he or they may suspect that any goods, effects, rights or credits of the absconding debtor or principal are placed or concealed: *Provided however,* That no such name or names shall be inserted after the said writ or process has been served upon the principal or absconding debtor or debtors.

Plaintiff may insert the names of other trustees at any time before service of the process on the principal.

SEC. 3. *Be it further enacted,* That if the principal shall be absent from the State when such writ shall be served, the Court shall continue the action two terms, that he may have notice, unless the principal after the service of the writ, and before the sitting of the Court shall have come into the State; in which case, it shall be in the discretion of the Court whether to continue the action or not; and when the principal does not appear in his own person, or by attorney, to answer such suit, the trustees, or any of them having goods, effects or credits of the principal in his or their hands or possession, may appear in his behalf, and in his name plead and defend to final judgment and execution.

In case of principal's absence from State at the time of service, action to be continued—unless he return before Court.

Trustee having goods, &c. may appear and plead in behalf of principal.

SEC. 4. *Be it further enacted,* That if any supposed trustee shall come into Court the first term and declare that he had not in his hands or possession, at the time the writ was served on him, any goods, effects or credits of the principal, and shall thereupon submit himself to an examination upon oath, and the said declaration shall appear to the Court to be true, the Court shall award him his legal costs; and if such trustee shall, at the time of service of such writ, dwell in any county, other than that in which the said writ is returnable, the Court shall allow him such further costs, as, with his legal costs, shall, under all the circumstances of the case, be a reasonable compensation to him for his time and expenses in appearing and defending himself against such suit; and every person resident in the county where

If trustee appear at first term and is discharged to recover his legal costs;

and if he live in another county, Court may allow him reasonable compensation, &c.

Trustee not appearing first term liable to costs.

Several trustees dwelling in same county, not appearing, shall be joint judgment and execution against them for costs.

When plaintiff does not support his action against principal, costs allowed to principal, and trustees who have appeared.

When all trustees are discharged plaintiff may still proceed against principal,

provided a service has been made on such principal, &c.

such writ shall be duly returned, who, being summoned as aforesaid, shall neglect to appear and submit to an examination, as to the supposed goods, effects or credits in his or her hands, and having no reasonable cause to the contrary, in the opinion of the Court where the suit shall be, shall be liable for all costs afterwards arising in such suit, to be recovered and paid out of his own goods and estate, in case judgment shall be finally rendered for the plaintiff; and unless such costs shall be duly recovered against the goods, effects or credits of the principal in the hands of a trustee. And if several persons, resident in such county, being duly summoned as aforesaid, shall neglect to appear as aforesaid, judgment and execution against them jointly, shall be awarded for such costs. And persons resident in other counties than where the writ is returnable, shall not be liable for any costs arising on the original process herein provided.

SEC. 5. *Be it further enacted*, That where the plaintiff doth not support his action against the principal, and judgment shall be rendered, that he take nothing by his writ, the Court shall award cost against him, as well in favour of the principal as in favour of such of the persons summoned as trustees severally, who have personally appeared in Court and submitted themselves to an examination, upon oath as aforesaid, and several executions shall issue thereupon accordingly. And where all the supposed trustees, or any one or more of them, come into Court, and are discharged upon examination on oath, as aforesaid, or when the suit shall be discontinued by the plaintiff against them, or against any one or more of them, the plaintiff may notwithstanding proceed against the principal, to trial, judgment and execution: *Provided however*, That where all the supposed trustees shall be discharged, as aforesaid, or where the plaintiff shall discontinue his suit against all of them, or whenever it shall appear from the record, that there is not any trustee in such suit; in all such cases the plaintiff shall not proceed in his suit against the principal, unless there shall have been such service of the original writ upon the principal as would authorize the Court to proceed to render a judgment against him, in an action brought and

commenced in the common and ordinary mode of process :

but the principal in such case may, if he think proper, come into Court and take upon himself the defence of the said suit: *And provided also*, That costs shall not be awarded in favour of any trustee, against whom the suit shall be discontinued as aforesaid, unless he come into Court the first term, and declare that he had not in his hands or possession, any goods, effects or credits of the principal, at the time of the service of the original writ, and thereupon submit himself to an examination upon oath, and such declaration be adjudged by the Court to be true.

but principal may if he think proper appear and answer. Trustee not entitled to costs unless he appear at first term and is discharged by Court.

SEC. 6. *Be it further enacted*; That when any supposed trustee shall, at the time of the service of the writ upon him, dwell in any other county than that in which the writ is returnable he shall not be required to appear in person in the original suit, nor in any suit upon a writ of scire facias founded thereon, but such supposed trustee may appear by attorney, and declare whether he had any, and what goods, effects or credits of the principal in his hands or possession, at the time when the writ was served on him, and thereupon offer to submit himself to an examination on oath; and if the plaintiff shall not see fit further to examine such supposed trustee, his declaration, so made by attorney, shall be deemed and taken to be true: and if the plaintiff shall think proper to examine such supposed trustee on oath, the answers of the trustee, upon such examination, may be sworn to before any Judge of the Circuit Court of Common Pleas for the county in which the trustee may dwell, or before any Justice of the Peace; and in all cases, when any supposed trustee shall have appeared in Court and submitted himself to an examination on oath in the manner prescribed by law, his answers, upon such examination, may be sworn to before any Judge of the Circuit Court of Common Pleas for the county in which the trustee may dwell, or before any Justice of the Peace; and such examination, being duly filed in the Court in which the writ is pending, shall in every case, have the same effect, and shall be considered in the same manner, in all respects, as if the same had been sworn to in the Court in which the writ is pending.

Trustee dwelling in other counties not bound to appear at Court in person,

but may appear by attorney and declare whether he had any goods, effects, &c. and offer to submit to examination—

and plaintiff may cause him to be examined before a Judge or Justice of the Peace in his own county, at first or afterwards—

such examination filed in Court to be sufficient.

When trustee discloses an assignment of goods, &c.

and the assignment is objected to as fraudulent,

assignee may become a party to the suit voluntarily, or

Court may summon him to appear.

His non-appearance to be entered on record.

And if assignee do not appear at second term on further notice, assignment to be ineffectual—

If assignee appear, validity of assignment shall be tried by Jury.

Original defendant may be witness for either party, in such case.

Either party may appeal.

How execution is to be awarded against principal, and trustee who has not appeared, &c.

SEC. 7. *Be it further enacted,* That whenever any person summoned as trustee of any debtor, shall in his answers, disclose an assignment to another, of the goods, effects or credits of the principal in his hands, and the plaintiff in the suit shall object that the assignment ought not to have any effect to defeat his attachment, and the Court shall think it just or convenient, that the assignee should become a party to the suit, the person so stated to be assignee, may for the purpose of trying the validity and effect of the assignment, become a party to the suit, upon his appearing voluntarily and claiming to be so admitted, or by coming into Court, upon being notified for that purpose, by a summons, which the Court where the action is pending, is authorized to issue, to be served and returned in such time and manner as the Court shall think the circumstances of the case may require; and if such supposed assignee shall not appear at the time and place named in such summons, his non-appearance shall be entered on the record; or the case may be continued to the next term, for further notice to the assignee, at the discretion of the Court; and if the supposed assignee does not appear in person, or by attorney, the assignment shall have no effect to defeat the plaintiff's attachment; and upon such assignee becoming a party to the suit, the validity of the assignment, or its effect on the case, shall be tried by the Court, or by a Jury, as the case may require: in which trial, in addition to the usual evidence in other cases, the original defendant may be admitted as a witness, upon the application of either party; and the Court may award legal costs for and against any of the parties at its discretion; and either party may appeal from any judgment of the Court, as in other cases.

SEC. 8. *Be it further enacted,* That when the plaintiff shall recover judgment against the principal, and there shall be any trustee summoned, who shall not have come into Court and discharged himself upon oath, and against whom the suit shall not be discontinued; the Court shall award execution against the goods, effects and credits of the principal, in the hands and possession of every such trus-

tee, as well as against the body, goods, and estate of the principal; and the execution shall be in the form prescribed by law.

SEC. 9. *Be it further enacted,* That when any execution, issued as aforesaid, shall be returned not fully satisfied, by reason of the trustee not discovering and exposing sufficient goods, effects and credits of the principal, as by reason of the officer's not finding sufficient goods and estate of the principal, to the acceptance of the plaintiff, to satisfy the same, the plaintiff may sue out against the trustees named in such writ of execution, or against any one or more of them, jointly or severally, a writ or writs of scire facias, in due form of law, requiring the defendants in such writs of scire facias named, to show cause why judgment for the sums remaining unsatisfied, should not be rendered against them; and if any one or more of the defendants, in such writs of scire facias named, the same being returned duly served, shall come into Court and declare, that he had not at the time of the service of the original writ upon him, any goods, effects or credits of the principal in his hands, or possession, and thereupon submit to an examination, upon oath; and if, upon such examination the supposed trustee shall appear not to be chargeable, the Court shall render judgment against him, if resident in the county where the original process was returnable, as the case may be, for costs only: and if not resident in such county, then the supposed trustee, so discharged, shall have costs; but if, upon such examination, it shall appear to the Court that the said trustees, or any one or more of them, had goods, effects or credits of the principal in his or their hands, at the time of serving the original writ as aforesaid, other than such as he or they have discovered and exposed to be taken to satisfy the execution on the first judgment, then the Court shall enter up judgment against him or them to the amount of the sums returned unsatisfied upon the said execution, if there shall appear, upon such examination to have been goods, effects or credits to that amount in his or their hands, not discovered and exposed as aforesaid; but if not, then the Court shall enter up judgment against him or them to the amount of the said goods, effects or credits in his or their

When execution is returned unsatisfied, trustee not exposing sufficient goods, &c.

Plaintiff may sue scire facias against trustees.

To be duly served.

Proceedings to be had on such scire facias, when trustee appears.

Proviso—
where trustee
has been ex-
amined on
original pro-
cess, judgment
shall be ren-
dered on that
examination.

Proceedings
on scire facias
when defend-
ant is default-
ed, not having
appeared, &c.
on the original
process.

Court may en-
ter up joint or
several judg-
ments;

and in judg-
ments on scire
facias execu-
tion to issue
in common
form.

Goods, &c. so
taken from
trustee shall
discharge him
from the prin-
cipal as to the
same.

Trustee may
plead general
issue in suits
against him.

Punishment of
trustee for wil-
ful false swear-
ing.

hands, not discovered and exposed, as aforesaid: *Provided nevertheless*, That where any trustee has come into Court, upon the original process, and been examined upon oath, as aforesaid; and upon such examinations, it has appeared to the Court, that such trustee had goods, effects or credits of the principal, in his hands, at the time of serving the original writ, such Trustee shall not be again examined upon the scire facias, but judgment shall be rendered upon his examination had as aforesaid.

SEC. 10. *Be it further enacted*, That if any trustee, upon whom the writ of scire facias shall be served, shall not appear, but shall be defaulted, he having never been examined upon oath under the original process, he shall be deemed and taken to have had in his hands and possession, at the time of the service of the original writ, goods, effects and credits of the principal, to the amount of the judgment rendered against him, and judgment shall be rendered against the trustee accordingly. And where there shall be more than one defendant, in any such writ of scire facias, the Court may enter up joint or several judgments, according to the circumstances of the case; and upon all judgments rendered upon such writs of scire facias, execution shall issue in common form against the goods and estate, and for want thereof, against the bodies of such person or persons against whom judgment shall be so rendered.

SEC. 11. *Be it further enacted*, That goods, effects and credits of any person so taken as aforesaid, by process of law, out of the hands of his trustee, shall forever acquit and discharge such trustee from and against all suits, damages and demands whatever, to be commenced or claimed by his principal, his executors or administrators of and for the same: and if any trustee shall be sued on account of any thing by him done pursuant to this Act, he may plead the general issue and give this Act in evidence.

SEC. 12. *Be it further enacted*, That any person, summoned as a trustee, as aforesaid, who shall upon his examination, had as aforesaid, knowingly and wilfully, answer falsely, shall upon conviction thereof in the Supreme Judicial Court, be adjudged to be guilty of perjury, and be liable and subject to all the pains, penalties, forfeitures and

disabilities thereto by law incident; and shall also out of his own proper estate, be liable and subjected to pay to the plaintiff in the action, his executors or administrators, the full amount of such judgment as he, they or any of them may have recovered against the principal, in case the same be unsatisfied; otherwise, such part thereof as may remain unsatisfied, together with the legal interest thereof, and double costs of suit, to be recovered in a special action on the case.

Liability of such trustee to pay out of his own estate the amount of plaintiff's demand against principal and double costs.

SEC. 13. *Be it further enacted*, That in every case where it shall appear, by the answer of the trustee, that he was, at the time of the service of the summons on him holden or bound to deliver to the principal at a future day, any specific article whatsoever, such trustee shall be and hereby is authorized and permitted on demand made by the officer having any execution in his hands, issued upon any judgment, recovered by virtue of this Act, to deliver to him such specific, article or articles, or so much thereof as may be necessary to satisfy such execution, with the legal fees thereon; the value of such article or articles, as between the principal and trustee to be estimated and ascertained by the appraisal of three disinterested and discreet men, one to be chosen by the trustee, one by the officer, and one by the principal, if he see cause; or if he neglect or refuse, then the officer shall appoint two of the said appraisers, who shall all be sworn before a Justice of the Peace in and for the county where such article or articles are to be delivered, faithfully and impartially to appraise the same: and the said Justice and appraisers shall make, on such execution, a certificate of their respective doings: *Provided however*, That in all cases where by the terms of the contract between the principal and trustee, any mode is pointed out for ascertaining the value of such specific articles, the principal and trustee, or either of them, may have their value thus ascertained and estimated: and in either case, the officer shall proceed to sell such articles and conduct in the sale thereof as in other cases of sales of personal property on execution, as is already by law provided; the overplus monies, after satisfying the execution and his fees, he shall pay over to the principal, if within the precinct of the officer, otherwise

Where by disclosure it appears that trustee is bound to deliver to the principal specific articles, at a future day, he may deliver same to the officer to satisfy the execution in whole or in part.

Value of such articles, how to be ascertained.

Proviso—in case of special agreement as to value.

Officer to sell the same as in other cases.

Where part only is sold trustee may deliver residue to principal.

to the trustee. And in all cases where a part only of such specific articles shall be taken in execution, as aforesaid, the trustee is hereby authorized to deliver the residue to the principal, or make tender thereof within thirty days after such execution shall have been satisfied, in the same manner as by law he might otherwise have delivered the whole.

If trustee die before examination, his executor or administrator may appear voluntarily, or be compelled to appear and answer as in common cases.

SEC. 14. *Be it further enacted*, That whenever any person who shall be summoned as a trustee as aforesaid, shall die before he may have been examined as aforesaid, his executors or administrators may appear; or if the plaintiff think proper, be compelled to appear and make answer to the suit, in the same way and manner executors and administrators are allowed or compellable to appear and answer to suits and actions in other cases. And in case of the death of any trustee, after his examination, and previous to the rendering of final judgment against the principal, the executors and administrators of such deceased trustee shall be liable and answerable to perform whatever such trustee, by his answer, would have been liable to do and perform, in case he had lived.

If trustee die after examination and before final judgment against principal—executor or administrator answerable, &c.

No persons liable as trustees by having given, endorsed, &c. negotiable securities.

SEC. 15. *Be it further enacted*, That no person shall be considered or adjudged to be a trustee, within the intent and meaning of this Act, by reason, or on account of his having made, given, endorsed, negotiated or accepted any negotiable security whatever.

Judgment creditors may have the benefit of this Act—discharging the principal's body from prison, (if committed) within seven days, by note in writing.

SEC. 16. *Be it further enacted*, That whenever any judgment creditor shall discover goods, effects or credits of his debtor, that are not attachable by the common and ordinary process of law, he shall be entitled to the process provided in this Act; and upon the agent, factor or trustees being summoned in the manner this Act directs, all the money, goods, effects and credits in his hands shall be secured to respond the judgment that may be given thereon, and he shall answer thereunto, at the first term, in case his principal has personal or other sufficient and legal notice of the suit, fourteen days before the Court's sitting: *Provided always*, That upon a judgment creditor's pursuing such remedy to recover his debt, he shall, within seven days after the same process on the supposed agent is served, discharge the body of the debtor (in case he is taken in execution upon the

same judgment) by a note or memorandum, in writing, directed and delivered to the officer who has him in custody, stating the reason and occasion of the discharge of the person of the debtor; and such a discharge shall not annul, or in any manner injure the original judgment: but in case the judgment creditor shall not within the seven days discharge the person of the debtor, in manner aforesaid, the process commenced as aforesaid, shall abate, and the debtor shall recover treble costs.

Such discharge not to injure original judgment.

Process to abate, unless discharged within 7 days.

[Approved February 28, 1821.]

CHAPTER LXII.

An Act for the Limitation of Actions real and personal, and of Writs of Error.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That after the fifteenth day of March, which will be in the year of our Lord one thousand eight hundred and twenty five, no person shall sue or maintain any writ of right, or make any prescription, title or claim, to any lands, tenements or hereditaments, or to any rents, annuities, or portions issuing therefrom, upon the possession or seizin of his or their ancestor or predecessor, beyond the term of thirty years, next before the test of the same writ.

Limitation of writ of right to 30 years.

SEC. 2 *Be it further enacted,* That after the fifteenth day of March, which will be in the year of our Lord one thousand eight hundred and twenty five, no person shall sue, have or maintain any writ of entry, upon disseizin done to any of his ancestors or predecessors, or any action possessory, upon the possession of any of his ancestors or predecessors, for any lands, tenements or hereditaments, unless the ancestor or predecessor, under whom the demandants shall claim, shall have been seized or possessed of the lands, tenements or hereditaments demanded, within twenty five years next before the test of the same writ or bringing such action.

Ancestral or possessory actions limited to 25 years.

SEC. 3. *Be it further enacted,* That after the fifteenth day of March, which will be in the year of our Lord one thousand eight hundred and twenty five, no person or body cor-

—Of action on demandant's own seizin, 20 years.

porate or politic, shall sue for, have or maintain any action for any lands, tenements or hereditaments, upon his or their own seizin or possession above twenty years next before the test of the same writ.

Formedons
and right of
entry.

Sec. 4. *Be it further enacted*, That all writs of formedon in descender, formedon in remainder, or formedon in reverter, of any lands, tenements or hereditaments whatsoever, hereafter to be sued or brought, shall be commenced within twenty years next after the title or cause of action first descended, and at no time after the said twenty years. And no person, unless by judgment of law, shall at any time hereafter, make any entry into any lands, tenements or hereditaments, but within twenty years next after his right or title, first descended or accrued to the same, and in default thereof, such person so not entering, and his heirs, shall be utterly excluded and disabled from making such entry thereunto: *Provided always*, That when any person that is or shall be entitled to any of the writs of formedon aforesaid, or to make any entry into lands, tenements or hereditaments, shall at the time the said right or title first descended, accrued or fell, be within the age of twenty one years, feme covert, non compos, imprisoned or beyond seas, or without the limits of the United States, that then such person shall and may bring such suit or make such entry at any time within ten years after the expiration of the said twenty years aforesaid, and not afterwards.

Proviso in fa-
vour of femes
covert, infants,
&c.

In certain
cases of entry
into lands, the
tenant, having
had possession
more than 6
years, may re-
cover of the
person enter-
ing the value
of improve-
ments, &c.

Sec. 5. *Be it further enacted*, That if any person shall make such entry into any lands, tenements or hereditaments, which the tenant or those under whom he claims, have had in actual possession for the term of six years or more before such entry, and withhold from such tenant the possession thereof, such tenant shall have right to recover of him so entering, in an action for money laid out and expended, the increased value of the premises, by virtue of the buildings and improvements made by such tenant or those under whom he claims; such right and value to be ascertained by the same principles as regulate such right and value under the Act for the settlement of certain equitable claims arising in real actions: *Provided*, Such entry so made by the proprie-

tor or owner, shall have been made while the tenant was in actual possession of the premises and against his consent.

SEC. 6. *Be it further enacted*, That in any writ or action which has been or may be hereafter brought for the recovery of any lands, tenements or hereditaments, it shall not be necessary for limiting the demandant and barring his right of recovery, that the premises defended shall have been surrounded by fences or rendered inaccessible by other obstructions, but it shall be sufficient if the possession, occupancy and improvement thereof by the defendant or those under whom he claims, shall have been open, notorious and exclusive, comporting with the ordinary management of similar estates in the possession and occupancy of those who have title thereunto, or satisfactorily indicative of such exercise of ownership as is usual in the improvement of a farm by its owner; and no part of the premises demanded and defended shall be excluded from the operation of the aforesaid limitation, because such part may be woodland or without cultivation.

Nature of the possession and occupancy of the tenant which will bar the action of demandant.

SEC. 7. *Be it further enacted*, That all actions of trespass *quare clausum fregit*, all actions of trespass, detinue, trover or replevin for goods or cattle, all actions of account and upon the case, other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants, all actions of debt, grounded upon any lending or contract, without specialty, all actions of debt for arrearages of rent, and all actions of assault, menace, battery, wounding and imprisonment, or any of them, shall be commenced and sued within the time and limitation hereafter expressed and not after; that is to say: the said actions upon the case, other than for slander, and the said actions of account; and the said actions of trespass, debt, detinue and replevin for goods or cattle, and the said actions of trespass *quare clausum fregit*, within six years next after the cause of such actions or suits, and not after; and the said actions of trespass, of assault, battery, wounding, imprisonment or any of them, within three years next after the cause of such actions or suits, and not after; and the said actions upon the case for words, within two years next after the words spoken, and not after: *Provided always*, That if upon any of the

Limitation of personal actions.

porate or politic, shall sue for, have or maintain
for any lands, tenements or hereditaments, up
own seizin or possession above twenty years
test of the same writ.

**Formed one
and right of
entry.**

Sec. 4. *Be it further enacted, That all in descender, formed on in remainder, or of any lands, tenements or hereditaments after to be sued or brought, shall be commenced within twenty years next after the title or cause accrued, and at no time after the said two years, unless by judgment of law, shall make any entry into any lands, but within twenty years next after descended or accrued to the same person so not entering, and hindered and disabled from making entry always, That when any writ to any of the writs of force and entry into lands, tenements or hereditaments, the said right or title shall be within the age of two years, or the person shall be out of the United States, that the person shall not sue or make any entry after the expiration of the said two years, but not afterwards.*

**Proviso in fa-
vour of females
covert, infants,
&c.**

In certain cases of entry into lands, the tenant, having had possession more than 6 years, may recover of the person entering the value of improvements, &c.

SEC. 5. Be it
make such entry
which the tena
in actual poss
such entry, a
thereof, such
tering, in a
increased
and impr
he claim
same n

time the same accrued was without the
and did not leave property or estate
by the common and ordinary process of
that then and in such case, the person that is
such suit or action, shall be at liberty to
same within the respective periods before
persons return into this State.

Provided always, And be it further enacted, That
not extend to bar any action hereafter brought
in writing, made and signed by any person or
ted by any one or more witnesses, whereby
ersons has promised, or shall promise to
person or persons, any sum of money men

such note or notes,
or or adminis-
d never
at.

which In case of fail-
h the ure of service
vice or of writ, &c. or
ult, negli- abatement of
it shall be it, what meas-
ed or the ac- ures plaintiff
may pursue to
avoid the limi-
tation.

by demurrer or
then and in any
as or her executor
ner action upon the
the limitation thereof,
y notwithstanding: *Pro-*
hall be duly commenced
aid and pursued at the next
as of the county in which tri-
or within three months next af-
a former writ was or shall be re-
gment of abatement or other evi-
happen and not afterwards.

ther enacted, That any action of the
unded upon any lending or contract, or
ent, which might have been or which may
secuted by or against any person deceased,
cease, at the time of his or her death, or
y days next preceding, shall and may be com-
y declaring in the same as aforesaid, and sued by
t the executor or administrator of such deceased
, within two years after the grant of letters testament-
r of administration, and not afterwards, if otherwise
ed by this Act, any thing which may be supposed herein
the contrary notwithstanding.

If creditor or
debtor dies &
suit might be
brought with-
in 30 days next
before such
death—how
limitation ap-
plies.

Sec. 13. Be it further enacted, That in any action which
shall be brought, for any debt upon simple contract, or
promise in writing, not under seal, the defendant therein
may give in evidence upon the general issue, his or her de-

In actions on
simple con-
tract or prom-
ise in writing,
not under seal.

Proviso in
case of rever-
sal of judg-
ment, &c.

said actions or suits, judgment be given for the plaintiff, and the same be reversed by reason of error or a verdict pass for the plaintiff, and for matter alleged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, that in all such cases the party, plaintiff, his executor or administrator, as the case shall require, may commence a new action or suit, from time to time, within a year after such judgment reversed or such judgment given against the plaintiff, and not after.

What shall be
deemed the
commence-
ment of a suit.

SEC. 8. *Be it further enacted,* That any action of the case or of debt grounded upon any lending or contract, or for arrearages of rent, which shall be actually declared upon in a proper writ, returnable according to law, purchased therefor, within the term of six years next after the cause of such action accrued; shall be deemed and taken to be duly commenced and sued within the meaning of this Act.

Limitation not
to apply to
femes covert,
infants, &c.
until disability
is removed.

SEC. 9. *Be it further enacted,* That this Act shall not be understood to bar any infant; feme covert, person imprisoned or beyond sea, without any of the United States, or non compos mentis, from bringing either of the actions before mentioned in the seventh section of this Act, within the term before set and limited for bringing such action, reckoning from the time that such impediment shall be removed: and if any person or persons against whom there is, or hereafter shall be, any cause of suit, for every and any of the species of action herein before enumerated in said seventh section of this Act, who at the time the same accrued was without the limits of this State, and did not leave property or estate therein that could by the common and ordinary process of law be attached; that then and in such case, the person that is entitled to bring such suit or action, shall be at liberty to commence the same within the respective periods before limited after such persons return into this State.

Nor to actions
on cash notes
witnessed,
when brought
by promisee,
or his executor
or administra-
tor.

SEC. 10. *Provided always, And be it further enacted,* That this Act shall not extend to bar any action hereafter brought upon any note in writing, made and signed by any person or persons and attested by any one or more witnesses, whereby such person or persons has promised, or shall promise to pay to any other person or persons, any sum of money men

tioned in such note, but all actions upon such note or notes, brought by the original promisee, his executor or administrator shall and may be maintained as if this Act had never been made; any thing herein contained to the contrary notwithstanding.

SEC. 11. *Be it further enacted,* That any action which shall be actually declared in as aforesaid, and in which the writ purchased therefor, shall fail of a sufficient service or return by any unavoidable accident or by the default, negligence or defect of any officer to whom such writ shall be duly directed, or when such writ shall be abated or the action thereby commenced shall be avoided by demurrer or otherwise, for informality of proceedings; then and in any such case, the plaintiffs or plaintiff, or his or her executor or administrator, may commence another action upon the same demand and shall thereby save the limitation thereof, any thing in this Act to the contrary notwithstanding: *Provided,* That such second action shall be duly commenced by declaring in the same aforesaid and pursued at the next Circuit Court of Common Pleas of the county in which trial of the cause may be had, or within three months next after the Court whereto such former writ was or shall be returnable, or wherein judgment of abatement or other evidence of such suit shall happen and not afterwards.

In case of failure of service of writ, &c. or abatement of it, what measures plaintiff may pursue to avoid the limitation.

SEC. 12. *Be it further enacted,* That any action of the case or of debt, grounded upon any lending or contract, or for arrearage of rent, which might have been or which may be sued and prosecuted by or against any person deceased, or who shall decease, at the time of his or her death, or within thirty days next preceding, shall and may be commenced by declaring in the same as aforesaid, and sued by or against the executor or administrator of such deceased person, within two years after the grant of letters testamentary, or of administration, and not afterwards, if otherwise barred by this Act, any thing which may be supposed herein to the contrary notwithstanding.

If creditor or debtor dies & suit might be brought within 30 days next before such death—how limitation applies.

SEC. 13. *Be it further enacted,* That in any action which shall be brought, for any debt upon simple contract, or promise in writing, not under seal, the defendant therein may give in evidence upon the general issue, his or her de-

In actions on simple contract or promise in writing, not under seal.

defendant may file account in offset, 7 days before Court. manders against the plaintiff, for goods delivered, monies paid, or service done, whereof an account shall be duly filed in the Clerk's office of the Court whereto such action is, or shall be brought, seven days, and before a Justice four days, at least, preceding the time of trial. And in all cases of mutual demands as aforesaid, the account of the defendant, if any time of limitation shall be objected thereto by the plaintiff, shall be considered and allowed as if an action had been duly commenced thereon, by declaring in the same, at the time when the plaintiff's action was or shall be commenced, any law, usage or custom to the contrary notwithstanding.

In such cases limitation as to the account will relate to the commencement of the action.

Limitation of actions on penal statutes. SEC. 14. *Be it further enacted,* That all actions, suits, bills or informations which shall hereafter be had, brought, sued or commenced, for any forfeiture upon any penal statute, made or to be made, the benefit whereof is or shall be by the said statute limited in whole or in part to the person or persons who shall inform and prosecute in that behalf shall be had, brought, sued or commenced by any person that may lawfully pursue the same as aforesaid, within one year next after the offence committed, or to be committed against the said statute; and in default of such pursuit, then the same shall be had, brought or prosecuted for the State, at any time within two years after the offence committed; and if any action, suit, indictment or information, for any offence against any penal statute shall be brought after the time in that behalf limited, the same shall be void and of none effect, any act to the contrary notwithstanding: *Provided always,* That when any action, suit or information is or shall be limited by any penal statute, to be had, sued, commenced or brought within a shorter time than is above mentioned, in every such case, the action, suit or information, shall be brought within the time limited by such statute.

Limitation of writs of error. SEC. 15. *Be it further enacted,* That no judgment in any action or suit heretofore, or which hereafter may be rendered, shall be reversed or avoided for any error or defect therein, unless the writ of error brought for reversing the same be sued out within twenty years next after the rendition of such judgment: *Provided always,* That if any person who

is or shall be entitled to such writ of error, shall at the time such title accrued, be within the age of twenty one years, covert or non compos mentis; then such person, his or her heirs, executors or administrators notwithstanding the said twenty years expired, may bring a writ of error for the reversing of any such judgment, as such person might have done in case this Act had not been made, so as the same writ of error be sued out within five years after the coming of age, discoverture, coming of sound mind, or death of such person, whichever shall first happen, and not afterwards.

Proviso in favour of persons in capacitated, &c.

SEC. 16. *Be it further enacted*, That all actions against Sheriffs, for the misconduct and negligence of their deputies, shall be commenced and sued within four years next after the cause of action.

Limitation of actions against Sheriffs, for misconduct of their deputies.

[Approved March 19, 1821.]

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CHAPTER LXIII.

An Act prescribing the Forms of Writs and other process in the cases therein mentioned.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That in all civil actions, the original and final process in the following cases betwixt party and party, shall be made out in the forms following, that is to say;

Forms of process.

[Summons.]

State of Maine.

Original summons.

SEAL. S—— ss. To the Sheriff of our county of S—— or his deputy, Greeting.

We command you that you summon A. B. of C. [addition] (if he may be found in your precinct) to appear before our Justices of our —— Court of ——, to be holden at B. within and for our said county of S. on the —— day of —— then and there in our said Court to answer to D. E. of R. within our county of M. [addition] in a plea of ——; to the damage of the said D. E. (as he saith) the sum of —— dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witness, E. H. Esq. at B. the —— day of —— in the year of our Lord ——.

A. D. Clerk.

Capias or attachment.

[Capias or Attachment.]

State of Maine.

SEAL. C—— ss. To the Sheriff of our county of C——
or his deputy, Greeting.

We command you to attach the goods or estate of R. F. of B. within our county of C—— [addition] to the value of —— dollars ; and for want thereof to take the body of the said R. F. (if he may be found in your precinct,) and him safely keep, so that you have him before our Justices of our —— Court of —— ; next to be holden at B. within and for our said county of C—— on the —— day of —— ; then and there in our said Court to answer unto D. S. of R. within our county of H. [addition] in plea of —— ; to the damage of the said D. S. (as he saith) the sum of —— dollars, which shall then and there be made to appear, with other due damages. And have you there this writ, with your doings therein. Witness, E. H. Esq. at P. the —— day of ——, in the year of our Lord ——.

A. D. Clerk.

**Summons
when goods
are attached.**

[Summons when goods are attached.]

State of Maine.

SEAL. C—— ss. To A. B. of B. within our county of C——, [addition] Greeting.

We command you that you appear at our next —— Court of —— to be holden at B. within and for our county of C—— aforesaid, on the —— day of ——, then and there to answer to C. D. of R. within our county of M. [addition] in a plea of —— ; which plea the said C. D. hath commenced against you, to be heard and tried at the said Court ; and your goods or estate are attached to the value of —— dollars, for security to satisfy the judgment which the said C. D. may recover upon the aforesaid trial. Fail not of appearance at your peril. Witness, E. H. Esq. at B. the —— day of ——, in the year of our Lord ——.

A. D. Clerk.

Execution.

[Execution.]

State of Maine.

SEAL. S—— ss. To the Sheriff of our county of S——
or his deputy, Greeting.

Whereas C. L. of R. within our county of S. [addition]

by the consideration of our Justices of our ——— Court of ———, holden at B. for and within our county of S—— aforesaid, on the ——— day of ———, recovered judgment against D. T. of B. in the county of M. [addition] for the sum of ——— dollars and ——— cents debt or damage, and ——— dollars and ——— cents costs of suit as to us appears of record, whereof execution remains to be done: We command you therefore, that of the goods, chattels or lands of the said debtor within your precinct, you cause to be paid and satisfied unto the said creditor at the value thereof in money, the aforesaid sum, being ——— dollars and ——— cents in the whole, with ——— cents more for this writ; and thereof also to satisfy yourself for your own fees. And for want of goods, chattels or lands of the said debtor to be by him shewn unto you, or found within your precinct, to the acceptance of the said creditor to satisfy the sums aforesaid, we command you to take the body of the said debtor, and him commit unto our gaol in B. in our county of S. aforesaid, and detain in your custody within our said gaol, until he pay the full sums above mentioned with your fees, or that he be discharged by the said creditor, or otherwise by order of law. Hereof fail not, and make return of this writ with your doings therein, [here insert the time and place of return as by law prescribed.] Witness, E. H. Esq. at B. the ——— day of ——— in the year of our Lord ———.

A. D. Clerk.

SEC. 2. *Be it further enacted*, That the writ for putting such into possession of any land or tenements as shall recover judgment for the same, and for levying the costs and damages recovered upon such suit, commonly called a writ of facias habere possessionem, and writ of fieri facias; as also the writ of scire facias, to be issued out of the Supreme Judicial Court, or Circuit Court of Common Pleas, respectively, shall be from time to time granted and issued in the form following, that is to say;

[Writ of Facias Habere Possessionem, and Fieri Facias.]

State of Maine.

Hab. facias
pos.

SEAL. S—— ss. To the Sheriff of our county of S——,
or his deputy, Greeting.

Whereas A. B. of C. [addition] before our Justices of

our ——— Court of ———, holden for or within our county of S. aforesaid, at B. upon the ——— day of ———, by the consideration of our said Court, recovered judgment for his title and possession of and in a certain messuage or tenement, with the appertenances, or ——— acres of land, with the appertenances and privileges, lying and being in the town of D. against E. F. of G. [addition] who had unjustly withheld, put out or removed the said A. B. from his possession thereof; and also at the said Court recovered judgment for ——— dollars and ——— cents for costs and damages, which he sustained by reason of the same, as to us hath been made to appear of record: We command you therefore that without delay, you cause the said A. B. to have possession of and in the said messuage or tenement, or the said ——— acres of land, with the appertenances and privileges: We also command you that of the goods, chattels or lands of the said debtor, within your precinct, at the value thereof in money, you cause the said creditor to be paid and satisfied the aforesaid sum of ——— dollars and ——— cents, which to the said creditor was adjudged for his costs and damages with ——— cents more for this writ, and thereof also to satisfy yourself for your own fees: and for want of such goods, chattels or lands of the said debtor, to be by him shewn unto you or found within your precinct, to the acceptance of the said creditor to satisfy the aforesaid sum: We command you to take the body of the said debtor, and him commit unto our gaol in B. in our county of S—— aforesaid, and detain in your custody within our said gaol, until he pay the full sum abovementioned with your fees: or that he be discharged by the said creditor or otherwise by order of law. Hereof fail not, and make return of this writ with your doings therein. [here insert the time and place of return as prescribed by law.] Witness, E. H. Esq. at B. the ——— day of ——— in the year of our Lord ———.

A. D. Clerk.

[Writ of Scire Facias.]

State of Maine.

Scire facias.

SEAL. S—— ss. To the Sheriff of our county of S——
or his deputy, Greeting.

Whereas C. D. of B. [addition] before our Justices of

our — Court of — holden for or within our said county of S. at B. on the — day of —, in the year of our Lord —, by the consideration of our said Justices, recovered against A. B. of E. [addition] the sum of — dollars and — cents, debt or damage; and also — dollars and — cents for costs and charges by him about his suit in that behalf expended; whereof the said A. B. is convict, as to us appears of record; and although judgment be thereof rendered, yet the execution for the said debt or damage and costs doth yet remain to be made; whereof the said C. D. hath made application to us to provide remedy for him in that behalf: Now to the end that justice be done, we command you, that you make known unto the said A. B. that he be before our Justices of our said — Court of — to be holden within or for our said county of S. at B. on the — day of — to show cause (if any he have) wherefore the said C. D. ought not to have his execution against him the said A. B. for his debt or damage and costs aforesaid; and further to do and receive that which our said Court shall then consider; and there and then have you this writ, with your doings therein. Herein fail not. Witness, E. H. Esq. at B. the — day of — in the year of our Lord —.

A. D. Clerk.

SEC. 3. *Be it further enacted*, That the several forms of writs and process here under written, shall be, and hereby are established to be the forms to be granted and used in civil causes triable before a Justice of the Peace, that is to say,

[Summons for appearance.]

SEAL. S — ss. To the Sheriff of the said county of S —, or either of his deputies, or the Constables of the towns within the said county, or to any or either of them,

Greeting.

In the name of the State of Maine, you are required to summon and give notice unto T. P. of B. aforesaid, [addition] if he may be found in your precinct that he appear before me J. D. Esq. one of the Justices of the Peace for the county aforesaid, at my dwelling house in B. on — the — day of — at — of the clock in the — noon; then and there to answer to E. L. of M. [addition] in a plea of —, to the damage of the said E. L. (as he saith) the sum of

Summons for appearance.

—, as shall then and there appear, with other due damages. And of this writ, with your doings therein, you are to make true return unto myself, at or before the said — day of —. Dated at B. aforesaid, the — day of — in the year of our Lord —. J. D.

[Capias, or Attachment.]

SEAL. S— ss. To the Sheriff of the said county of S— or either of his deputies, or the Constables of the town of B. within the said county, or to any or either of them, Greeting.

Capias or attachment.

In the name of the State of Maine, you are required to attach the goods or estate of T. P. of B. aforesaid [addition] to the value of —; and for want thereof, to take the body of the said T. P. (if he may be found in your precinct) and him safely keep, so that he may be had before me J. D. Esq. one of the Justices of the Peace for the county aforesaid, at my dwelling house in B. on —, the — day of — at — of the clock in the — noon; then and there to answer to E. L. of M. [addition] in a plea of —; to the damage of the said E. L. (as he saith) the sum of —, as shall then and there appear, with other due damages. Hereof fail not, and make due return of this writ, and of your doings therein, unto myself, at or before the said — day of —. Dated at B. aforesaid, the — day of — in the year of our Lord —. J. D.

[Summons when Goods are attached.]

SEAL. S— ss. To T. P. of D. in the county of S— [addition] Greeting.

Summons when goods are attached.

In the name of the State of Maine, you are commanded to appear before me J. D. Esq. one of the Justices of the Peace for the County aforesaid, at my dwelling house in B. on —, the — day of —, at — of the clock in the — noon, to answer unto E. L. of M. [addition] in a plea of —; which plea the said E. L. hath commenced to be heard and tried before me; and your goods or estate are attached to the value of — for security to satisfy the judgment which the said E. L. may recover upon the aforesaid trial. Fail not of appearance at your peril. Dated at B. aforesaid, the — day of —, in the year of our Lord —. J. D.

[Execution.]

SEAL. S—— ss. To the Sheriff of our said county of S——, or either of his deputies, or the Constables of the towns within our said county, or any or either of them, Execution.

Greeting.

Whereas E. L. of M. [addition] on the —— day of ——, before J. D. Esq. one of our Justices of the Peace for our county aforesaid, recovered judgment against T. P. of B. [addition] for the sum of —— debt or damage, and —— dollars and —— cents for charges of suit, as to us appears of record, whereof execution remains to be done; We command you, therefore that of the money of the said debtor, or of his goods or chattels within your precinct, at the value thereof in money, you cause to be levied paid and satisfied unto the said creditor the aforesaid sums, being —— dollars and —— cents, in the whole; and also that out of the money goods or chattels of the said debtor, you levy —— more for this writ, together with your own fees.—And for want of such money, goods or chattels of the said debtor, to be by him shown unto you, or found within your precinct, to the acceptance of the said creditor for satisfying the aforesaid sums. We command you to take the body of the said debtor, and him commit unto our gaol in B. and we command the keeper thereof accordingly to receive the said debtor into our said gaol, and him safely keep until he pay the full sums above mentioned, with your fees, or that he be discharged by the said creditor, or otherwise by order of law. Hereof fail not, and make return of this writ with your doings therein unto our said Justice, within sixty days next coming. Witness, our said Justice at B. the —— day of —— in the year of our Lord —— J. D.

Sec. 4. *Be it further enacted*, That the form of the writ of scire facias aforesaid shall be the form of a writ of scire facias upon a judgment recovered before a Justice of the Peace, mutatis mutandis.

Sec. 5. *Be it further enacted*, That the writ of dower, and the writ of seizin of dower, shall be sued out in the forms following, to wit:

THE UNITED STATES OF AMERICA

DO hereby certify that

the following is a true and correct copy

of the original as the same appears on file

in the office of the

Secretary of the Interior

at Washington, D. C.

on this 10th day of January, 1900

at Washington, D. C.

W. A. RORER, Secretary.

of the

Department of the Interior

do hereby certify that

the following is a true and correct copy

of the original as the same appears on file

in the office of the

Secretary of the Interior

at

Washington, D. C.

on this 10th day of January, 1900

at Washington, D. C.

W. A. RORER, Secretary.

of the

Department of the Interior

do hereby certify that

the following is a true and correct copy

of the original as the same appears on file

in the office of the

Secretary of the Interior

at Washington, D. C.

on this 10th day of January, 1900

at Washington, D. C.

W. A. RORER, Secretary.

of the

Department of the Interior

do hereby certify that

the following is a true and correct copy

of the original as the same appears on file

in the office of the

Secretary of the Interior

at Washington, D. C.

or chattels of the said A. B. to be by him shown unto or found within your precinct to satisfy the same, we command you to take his body, and to commit him to the keeper of our gaol in B—— in our county aforesaid, within the said prison, whom we likewise command to receive the said A. B. and him safely to keep until he pay unto the said —— the full sum above mentioned, and also satisfy your fees. Hereof fail not, and make return of this writ, and how you shall have executed the same to [here insert the time and place of return as prescribed by law.] Witness, E. H. Esq. at B. the —— day of —— in the year of our Lord —— Clerk.

SEC. 6. *Be it further enacted*, That the trustee writs of attachment and execution shall be sued out in the forms following, to wit:

[Form of Trustee Writ of Attachment.]

State of Maine.

SEAL. S—— ss. To the Sheriff of our county of ——, or to either of his deputies, Greeting.

We command you to attach the goods and estate of A. B. of C. within our county of D. [addition] to the value of —— dollars, and summons the said A. B. (if he may be found in your precinct) to appear before our Justices of our Circuit Court of Common Pleas next to be holden at —— within and for our county of —— on the day of —— then and there in our said Court, to answer unto E. F. of G. within our county of H. [addition] in a plea of ——, to the damage of the said E. F. as he saith the sum of —— dollars, which shall then and there be made to appear, with other due damages: and whereas the said E. F. saith that the said A. B. has not in his own hands and possession, goods and estate to the value of —— dollars, aforesaid, which can be come at, to be attached, but has intrusted to, and deposited in the hands and possession of J. K. of ——, [addition] trustee of the said A. B. goods, effects and credits, to the said value; We command you therefore, that you summon the said J. K. if he may be found in your precinct to appear before our Justices of our said Court to be holden as aforesaid, to show cause (if any he have) why execution to be issued upon such judgment as the said E. F. may recover against the said A. B. in this action (if any) should not issue against his goods, effects or credits in the hands

Trustee writs.

Trustee writ of attachment.

and possession of him the said J. K.; and have you there this writ, with your doings therein. Witness, L. M. Esq. at — the — day of — in the year of our Lord one thousand eight hundred and — N. O. Clerk.

[Form of Trustee Execution.]

State of Maine.

SEAL. S — ss. To the Sheriff of our county of —, or his deputy, Greeting.

Trustee
Execution.

Whereas D. S. of R. within our county of S. [addition] by the consideration of our Justices of our Circuit Court of Common Pleas holden at —, within and for our county of — aforesaid, on the — day of — recovered judgment against R. F. of — in the county of — [addition] aforesaid, for the sum of — debt or damage (as the case may be) and — costs of suit; and whereas by the consideration of the same Court, execution was likewise awarded for the same sums against the goods, effects and credits of the said R. F. in the hands and possession of A. B. of — [addition] and C. D. of — [addition] Trustees of the said debt, as to us appears of record, whereof execution remains to be done: We command you, therefore, that of the goods, chattels, or lands of the said debtor in his own hands and possession, and of the goods, effects and credits of the said debtor in the hands and possession of the said Trustees, jointly and severally, you cause to be paid and satisfied unto the said creditor, at the value thereof in money, the aforesaid sums, being — in the whole, with — more for this writ; and thereof also to satisfy yourself for your own fees; and for want of goods, chattels or lands of the said debtor, in his own hands and possession, to be by him shown unto you, or found in your precinct, to the acceptance of the said creditor; and for want of goods, effects and credits of the said debtor in the hands and possession of the said Trustees, to be by them discovered and exposed to you, to satisfy the several sums aforesaid, with your own fees: We command you that you take the body of the said debtor, and him commit unto our gaol in — in our county of — aforesaid, and detain in your custody, within our said gaol, until he pay the full sums aforementioned, with your fees, or that he be discharged by the said creditor or other-

wise by order of law. Hereof fail not, and make return of this writ with your doings therein, [here insert the time and place of return as by law prescribed.] Witness W. C. Esq. at — the — day of —, in the year of our Lord —.

J. S. Clerk.

SEC. 7. *Be it further enacted*, That in proceedings in audita querela the writ of attachment and summons thereon, shall be in form following, to wit :

[Form of Writ of Attachment in Audita Querela.]

State of Maine.

SEAL. — ss. To the Sheriff of our county of —, or his deputy, Greeting.

We command you to attach the goods or estate of A. B. of — to the value of — dollars, and for want thereof to take the body of the said A. B. if he may be found in your precinct, and him safely keep so that you have him before our Justices of our — Court — next to be holden at — within and for our county of — on the — day of — then and there in our said Court to answer unto the grievous complaint of C. D. of —, who complaineth and saith [here let the declaration be inserted] by all which the said C. D. as he saith is damaged the sum of — dollars, as shall then and there be made to appear. And have you there this writ, with your doings therein. Witness, W. C. Esquire, at —, this — day of —, in the year of our Lord —.

Writ of attachment in audita querela.

A. H. Clerk.

[Form of Summons in Audita Querela.]

State of Maine.

SEAL. — ss. To A. B. of — Greeting.

We command you that you appear at our — Court — next to be holden at —, within and for our county of —, on the — day of —, then and there to answer to the grievous complaint of C. D. of — [here recite an abstract of the declaration] which complaint is to be heard and tried at the said Court; and your goods or estate are attached to the value of — dollars to satisfy the judgment which the said C. D. may recover upon the aforesaid trial. Fail not of appearance at your peril. Witness, W. C. Esquire at — the — day of — in the year of our Lord —.

Summons in audita querela.

A. H. Clerk.

Sec. 8. *Be it further enacted,* That where the writ of audita querela shall be issued, in the form of a writ of summons, the form thereof may be as followeth :

State of Maine.

SEAL. ——— ss. To the Sheriff of our county of ———
or his deputy, Greeting.

Audita querela
in form of sum-
mons.

We command you that you summon A. B. of ———, if he may be found in your precinct, to appear before our Justices of our Court ——— next to be holden at ——— within and for our county of ——— on the ——— day of ——— then and there in our said Court to answer to the grievous complaint of C. D. of ——— who complaineth and saith [here let the declaration be inserted]; by all which the said C. D. as he saith, is damaged the sum of ——— dollars as shall then and there be made to appear. And have you there this writ with your doings therein. Witness, W. C. Esquire, at ——— this ——— day of ——— in the year of our Lord ———.

A. H. Clerk.

Sec. 9. *Be it further enacted,* That in all proceedings in replevin, the writs in the following cases shall be in form following, to wit :

[Form of a Writ of Replevin for liberation of Cattle Impounded.]

State of Maine.

L. S. S—— ss. To the Sheriff of our county of S——, or his deputy, or to either of the Constables of the town of B. in the said county, Greeting.

Writs of re-
plevin for cat-
tle impound-
ed.

We command you that you replevy [here insert a description of the beast or beasts impounded] belonging to P. D. of B. [addition] now distrained or impounded by S. P. of B. [addition] in the common pound in said B. (or in such other place as they may be restrained) and them deliver unto the said P. D. Provided, the same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said P. D. and summon the said S. P. to appear before J. S. one of our Justices of the Peace for our said county of S. at his dwelling house in B. on the ——— day of ——— at ——— of the clock in the ———noon, to answer unto the said P. D. in a plea of replevin, for that the said S. P. on the ——— day of ——— at a place called A. in B. afore-

said, unlawfully took and impounded the said —, and the same unjustly detained to this day, to the damage of the said P. D. as he saith the sum of — dollars, as shall then and there appear, with other due damages: Provided, he the said P. D. shall give bond, with sufficient surety or sureties to the said S. P. in the sum of —, being double the value of the said beasts, to prosecute his said replevin to final judgment, and to pay such damages and costs as the said S. P. shall recover against him, and also to return the said —, in case such shall be the final judgment. And of this writ with your doings hereon, and the bond you shall take, you are to make return to our said Justice on or before the said — day of — at — o'clock. Witness, J. S. our said Justice, at B. in the said county, this — day of — Anno Domini —. J. S.

[Form of a Writ of Replevin for goods or chattels taken, distrained or attached, which are claimed by a third person, when of the value of more than twenty dollars.]

State of Maine.

L. s. S— ss. To the Sheriff of our county of S—, or his deputy, Greeting.

[Or if the Sheriff or his deputy are defendants, then it may be directed to a Coroner.]

We command you that you replevy the goods and chattels following, viz. [here enumerate and particularly describe them] belonging to P. D. of B. [addition] now taken, detained or attached (as the case may be) by S. P. of B. [addition] at — in B. aforesaid, and them deliver unto the said P. D. Provided, the same are not taken and detained upon mesne process, warrant of distress, or upon execution, as the property of the said P. D. and summon the said S. P. that he appear before our Justices of our Circuit Court of Common Pleas, next to be holden at B. within and for our county of S— on the — day of — to answer unto the said P. D. in a plea of replevin, for that the said S. P. on the — day of — at said B. unlawfully, and without any justifiable cause, took the goods and chattels of the said P. D. as aforesaid, and them unlawfully detained to this day, to the damage of the said P. D. as he says, the sum of — dollars: Provided, he the said P. D. shall give

Writ of replevin for goods taken, &c.

bond to the said S. P. with sufficient surety or sureties in the sum of —— dollars, being twice the value of the said goods and chattels, to prosecute the said replevin to final judgment, and to pay such damages and costs as the said S. P. shall recover against him; and also to return and restore the same goods and chattels, in like good order and condition as when taken, in case such shall be the final judgment; and have you there this writ, with your doings herein, together with the bond you shall take. Witness, S. N. Esq. at B. this —— day of —— Anno Domini ——.

E. P. Clerk.

[Form of Writ of Restitution on Judgment rendered before a Justice of the Peace.]

State of Maine.

L. s. S—— ss. To the Sheriff of our county of S——, or his deputy, Greeting.

Writ of restitution from a Justice of Peace.

Whereas P. D. of B. in our county of S. [addition] lately replevied the beasts following: [Here insert such description of them as they had in the writ of replevin] which S. P. of B. in our county of S—— [addition] had unlawfully taken and unjustly detained, as the said P. D. suggested, and caused the said S. P. to be summoned before J. S. one of our Justices of the Peace, for our said county of S. to answer unto the said P. D. for such supposed unlawful taking and detaining, at a day now passed: and whereas upon the —— day of —— at B. aforesaid, upon a hearing of the cause of taking and detaining the said beasts, before our said Justice, it appeared that the same taking and detaining was lawful and justifiable; Whereupon it was then and there considered, that the same beasts be returned, and restored to the said S. P. irrepleviable, and that the said S. P. recover against the said P. D. the sum of —— damages, for his taking the same by the said process of replevin, and the further sum of —— for his costs, arisen in the defence of the said suit, as by the record of our said Justice, before him remaining to us appears; whereof execution remains to be done: We command you therefore, that you forthwith return and restore the same beasts unto the said S. P. And also that of the money of the said P. D. or of his goods or chattels within your precinct, at the value thereof in money

you cause to be levied, paid and satisfied unto the said creditor the aforesaid sums, being — in the whole, with — cents more for this writ, together with your own fees ; and for want of such money, goods or chattels of the said debtor to be by him shown unto you or found within your precinct, to the acceptance of the said creditor for satisfying the aforesaid sums ; We command you to take the body of the said debtor, and him commit unto our gaol in B. and we command the keeper thereof accordingly, to receive the said debtor into our said gaol, and him safely to keep, until he pay the full sums above mentioned, with your fees, or that he be discharged by the said creditor, or otherwise by order of law. Hereof fail not, and make return of this writ, with your doings therein, unto our said Justice, within sixty days next coming. Witness our said Justice at B. the — day of — in the year of our Lord —. J. S.

[Form of Writ of Withernam.]

State of Maine.

L. s. S — ss. To the Sheriff of our county of S —, or his deputy, Greeting.

Whereas P. D. of B. in our county of S. [addition] Withernam, lately replevied the beasts following, viz. [here insert such description of them as they had in the writ of replevin] and which were at the time of the replevy, of the value of — which S. P. of B. aforesaid had unlawfully taken and detained, as the said P. D. suggested, and caused the said S. P. to be summoned before J. S. one of our Justices of the Peace, for our said county of S. to answer unto the said P. D. for such supposed unlawful taking and detaining, at a day now passed ; and whereas upon the — day of — at B. aforesaid, upon a hearing of the cause of taking and detaining the said beasts, by our said Justice, it was determined, that the same taking and detaining, was lawful and justifiable : Whereupon it was then and there considered, that the beasts be returned and restored to the said S. P. irrepleviable, and for his damages and costs ; and afterwards on the — day of — our writ of return and restitution issued, in due form of law, directed to the Sheriff of our said county of S. or his deputy, to return the same accordingly ; which writ of return and restitution was delivered to C. D.

to execute accordingly; who on the — day of — returned thereon, [here insert the return made by the officer, of his inability to return the beast.] And we being desirous that the said P. D. should not, by his false suggestions and pretensions any longer detain the beasts so by him replevied as aforesaid, command you forthwith to take the beasts of the said P. D. of like kind and value, if any he hath to be found in your precinct, in withernam, and in default thereof any other of his goods and chattels to the full value, in withernam, and them deliver unto the said S. P. to be by him kept, used and improved, until the said P. D. shall restore him the beasts he took from him, by our writ of replevin, as aforesaid; and also that of the money of the said P. D. or of his goods or chattels to be found within your precinct, at the value thereof in money, you cause to be paid and satisfied unto the said S. P. — for this writ together with your own fees for executing the same. Hereof fail not, and make return of this writ, with your doings herein, unto our said Justice, within sixty days next coming. Witness, our said Justice at B. the — day of — in the year of our Lord —.

J. S.

SEC. 10. *Be it further enacted*, That the form of the writ for the replevying of a person, and of original and alias writs of Withernam shall be as follows, to wit:

[Replevying a person.]

[Form of the original Writ where any person stands committed by lawful authority.]

State of Maine.

L. S. S—— ss. To the Sheriff of our county of S——,
Greeting.

Writ for replevying a person lawfully committed.

We command you, that justly and without delay, you cause to be replevied C. D. who (as it is said) is taken and detained in our gaol in N. within our said County of S, by the commitment of A. B. that he the said C, D. may be at our Supreme Judicial Court, next to be holden at — within our county aforesaid, upon the — day of — next, then and there in our said Court to answer to all such things as shall be then and there objected against him: more especially for the offence for which he stands committed, unless, while the writ of habeas corpus is suspended by

the Legislature, he stands committed by the Supreme Executive Power of the State, as dangerous to the public safety, or by the same or some subordinate authority of the government, for treason, the death of man, counterfeiting the common currency, house burning, burglary, robbery or some other offence whereof if he is convicted, he may suffer death or banishment; or unless he is holden under execution upon judgment for debt, forfeiture or in withernam, or by distress for taxes, or under sentence after conviction, for fine, or costs, or in punishment. Witness, W. C. Esq. at — the — day of — in the year our Lord —.

L. M. Clerk.

And where the plaintiff is held without order of law, the writ shall be in form following, viz.

State of Maine.

L. S. S — ss. To the Sheriff of our county of S —, Greeting.

We command you that justly and without delay you cause to be replevied C. D. who (as it is said) is taken and detained in a place called N. within our said county of S. by the duress of G. H. that he the said C. D. may appear at our Circuit Court of Common Pleas, next to be holden at — within and for our said county of S. upon the — day of — next, then and there in our said Court to demand right and justice against the said G. H. for the duress and imprisonment aforesaid, and to prosecute his replevin as the law directs: Provided, that if he, the said C. D. is held by the said G. H. as his ward, infant, or one to whose service he is entitled, or as a principal to whom the said G. H. is bail, and he shall make you secure by good and lawful mainpernors for his appearing at our Court aforesaid to prosecute his replevin against the said G. H. and to have his body at the same Court, ready to be re-delivered if ordered thereunto, and to pay all such damages and costs, as shall be then and there awarded against him; then and not otherwise you are to deliver him; and if the said C. D. is by you delivered at any day before the sitting of our said Court, you are to summon the said G. H. by serving him with an attested copy of this writ, that he may appear at our said Court, to answer unto the said C. D. upon his replevin. Wit-

Writ for replevying a person committed without order of Law.

FORMS OF WRITS, &c.

ness, T. N. Esq. at B. the — day of — in the year of
our Lord —. X. Y. Clerk.

[Original Writ of Withernam.]

State of Maine.

L. s. S — ss. To the Sheriff of our county of
S —, Greeting.

Whereas we have heretofore, by our writ for replevyng a person, commanded you that justly and without delay [here the original writ for replevyng a person shall be recited] and you having returned thereupon [here the Sheriff's return shall be recited]. We therefore command you that without delay you take the body of the said G. H. if he may be found in your precinct, and him safely keep, so that he may be at our Circuit Court of Common Pleas, next to be holden at — within and for our said county of S. on the — day of — next, then and there in our said Court to traverse the return aforesaid upon our original writ for replevyng a person, and that if he shall be found guilty of the elongation of the said C. D. he may be held by our alias writ of withernam, until he shall produce the body of the said C. D. that he may be delivered as the law directs. Witness, T. N. Esq. at B. the — day of — in the year of our Lord —. X. Y. Clerk.

And the alias Writ of Withernam shall be in form following, viz.

State of Maine.

L. s. S — ss. To the Sheriff of our county of S —,
Greeting.

Withernam.

Whereas we commanded you, by our original writ for the replevyng of a person that [here the original writ for replevyng a person shall be recited] upon which writs return was made, that [here the return shall be recited] whereupon our writ of withernam was duly issued commanding you that [here the writ of withernam shall be recited] and at our said Court the said G. H. [here all the consequent proceedings shall be recited] whereupon it was considered and adjudged by our said Court, that the body of the said G. H. should be taken and held, until he shall produce the body of the said C. D. and until he shall pay the sum of — taxed in costs against him. We therefore command you, that you take the body of the said G. H. into your custody,

and him there to hold irrepleviably in one of our gaols in our said county of S—— until he shall produce the body of the said C. D. or is discharged by order of law. Witness, —— Esq. at B. the —— day of —— in the year of our Lord ——.

Clerk.

SEC. 11. *Be it further enacted*, That in all civil causes, pending in any Court, the subpoena to witnesses shall be in the form following, to wit :

[Subpoena for Witnesses.]

S—— ss. To A. B. of C. [addition] Greeting.

You are hereby required in the name of the State of Maine, to make your appearance before the Justices of the —— next to be holden at B. within and for the county of S. on the —— day of —— to give evidence of what you know relating to an action or plea of —— then and there to be heard and tried betwixt A. B. of C. [addition] plaintiff, and D. E. of E. [addition] defendant. Hereof fail not, as you will answer your default under the pains and penalty in the law in that behalf made and provided. Dated at B. the —— day of ——, in the year of our Lord ——.

Subpoena for witnesses.

A. D. Clerk.

SEC. 12. *Be it further enacted*, That in all proceedings in forcible entry and detainer, the warrant to summon a jury; the summons to the party complained against, and the writ of restitution shall be in the forms following, to wit :

[Forcible Entry and Detainer.]

[Form of Warrant to Sheriff to summon a Jury.]

State of Maine.

L. s. S—— ss. To the Sheriff of the county of S——, Greeting.

Whereas complaint is made to us the subscribers, two of the Justices of the Peace for and within the county of S. quorum unus, by A. B. of D. in the same county, gentleman, that E. F. of —— yeoman, upon the —— day of —— at D. aforesaid, with force and arms, and with a strong hand, did unlawfully and forcibly enter into and upon a tract of land of him the said A. B. at D. aforesaid, containing —— acres bounded as follows, viz. (or into the messuage or tenement of him the said A. B. as the case may be) and him the said A. B. with force and a strong hand as aforesaid, did

Form of warrant to summon a Jury in forcible entry and detainer.

expel and unlawfully put out of the possession of the same, [or if it is a forcible detainer only, then the entry shall be described and the detainer inserted as follows:] and him the said A. B. does unlawfully, unjustly, and with a strong hand, deforce and still keep out of the possession of the same. You are therefore commanded in behalf of the said State, to cause to come before us upon the — day of — at —, in the said county twelve good and lawful men of our county each one of whom having a freehold of the yearly value of five dollars to be empannelled and sworn to inquire into the forcible entry and detainer (or the detainer) afore described. Given under our hands and seals the — day of — in the year of our Lord —.

R. S. } Justices of the Peace,
N. O. } quorum unus.

[Forcible Entry and Detainer.]

[Form of Summons to the party complained against.]

State of Maine.

L. s. S — ss. To the Sheriff of our county of S —, Greeting.

Summons to
the party com-
plained
against.

We command you that you summon E. F. of — to appear before the subscribers, two of our Justices of the Peace, within and for our said county of S — quorum unus, at a place called — in D — in the said county, at — o'clock in the — noon, then and there to answer to, and defend against the complaint of A. B. to them exhibited, wherein he complains that [here the complaint shall be recited] and you are to make a return of this writ, with your doings therein unto our said Justices, upon or before the said day. Witnesses, our said Justices, the — day of — in the year of our Lord —.

N. O.

[Forcible Entry and Detainer.]

R. S.

[Form of Writ of Restitution.]

State of Maine.

L. s. S — ss. To the Sheriff of our county of S —, Greeting.

Writ of resti-
tution.

Whereas at a Court of Inquiry of forcible entry and detainer, held at D. in our county of S. upon the — day of — in year of our Lord —, before R. S. and N. O. Esquires, two Justices of the Peace for our said county of S. quorum unus, the Jurors empannelled

and sworn by our said Justices, did return their verdict in writing signed by each of them, that A. B. was upon the ——— day of ——— in the rightful possession of a certain messuage or tract of land [as in the verdict returned] and that &c. [as in the verdict] whereupon it was considered by our said Justices, that the said A. B. should have restitution of the same. We therefore command you, that taking with you the force of the county, if necessary, you cause the said E. F. to be forthwith removed from the premises, and the said A. B. to have the peaceable restitution of the same; and also that you levy of the goods, chattels or lands of the said E. F. the sum of ——— being costs taxed against him on the trial aforesaid, together with ——— cents more for this writ and your own fees, and for want of such goods, chattels or lands of the said E. F. by you found, you are commanded to take the body of the said E. F. and him commit to our gaol in L. in our said county of S. there to remain until he shall pay the sum aforesaid, together with all fees arising on the service of this writ, or until he is delivered by order of law, and make return of this writ, with your doings therein, within twenty days next coming. Witness, our said Justices, at D. aforesaid, the ——— day of ——— in the year of our Lord———.

R. S.

N. O.

[Approved March 19, 1821.]

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CHAPTER LXIV.

An Act directing the Process in Habeas Corpus.

Whereas the writ commonly called the Writ of Habeas Corpus is a writ of right to which the citizens of this State, by the constitution and the law of the land are at all times entitled, to obtain relief from every wrongful imprisonment, or unlawful restraint of personal liberty :

Preamble.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That any person imprisoned in any common gaol, or otherwise restrained of his personal liberty by any officer or officers, or any other person or persons for any cause or upon any pretence whatever, he, or any person in his behalf, may complain, in writing,

Who are entitled to writ of habeas corpus, and mode of applying for it.

Sup. J. Court,
or any Judge
thereof may
grant the writ,

returnable to
said Court, or
any Judge
thereof.

Persons con-
fined for cer-
tain offences,
&c. not allow-
ed the writ :

But said Court
or Judge may
bail for any of-
fence, special
cases except-
ed.

Form of writs
to be issued in
different cases.

to the Supreme Judicial Court of this State, or to any one Judge of said Court, in term time in any county, or to any one or more of the Judges thereof in the vacation time of the said Court; and upon such complaint, and upon view of the copy of the warrant (if any there be) by which such person stands committed, or upon his affidavit certified by a Justice of the Peace, or on the oath of the person applying on his behalf, or any other credible witness, or upon the affidavit of such witness, certified as aforesaid, if he lives more than twenty miles from the Court or Judge applied to, that a copy of such warrant has been demanded and denied; the said Court or Judge in term time, and the said Judge in the vacation, hereby are respectively authorized and required to award a writ of habeas corpus, directed to the officer or person imprisoning or restraining the complainant, returnable forthwith to such Court or Judge who awarded the same, or to any other Judge of said Court; except the complaint be in favour of persons committed for treason or felony, or for suspicion thereof, or as accessory to the latter before the fact, plainly and specially expressed in the warrant of commitment, or persons convicted or in execution by legal process, criminal or civil, or committed by mesne process in any civil action for want of reasonable bail, and persons with regard to whom the benefit of the said writ shall be suspended by the Legislature agreeably to the Constitution: *Provided*, That nothing in this Act contained shall be construed to hinder or restrain the said Supreme Judicial Court, in term time, or any one or more Judges thereof in the vacation, from bailing any person wherever and for whatever offence committed at their discretion, whenever the circumstances of the case shall appear to require it, persons committed by the Governor and Council, Senate or House of Representatives, agreeable to, and for the causes mentioned in the Constitution, always excepted.

SEC. 2. *Be it further enacted*, That such writ, when awarded by the said Court, shall be signed by the Clerk, tested by the first Justice who is not party thereto, and sealed with the seal thereof; but when awarded by any Judge, in the vacation, shall only be under the hand and seal of such Judge, and shall direct the place to which the com-

plainant shall be brought; and the form of such writ when awarded by the Supreme Judicial Court, shall be as follows, viz.

State of Maine.

(L. S.) S—— ss. To——

Greeting.

We command you that the body of A. B. of ——, in our prison, under your custody [or by you imprisoned and restrained of his liberty, as the case may be] as it is said, together with the day and cause of his taking and detaining, by whatsoever name the said A. B. shall be called or charged, you have before our Justices of our Supreme Judicial Court, holden at B—— within and for the county of S—— immediately after the receipt of this writ, to do and receive what our said Justices shall then and there consider concerning him (or her) in this behalf, and have there this writ. Witness, ——, Esq. at B. this —— day of —— in the year of our Lord ——.

Clerk,

And the like form shall be used by the Judge, *mutatis mutandis*, when such writ shall be awarded by him.

SEC. 3. *Be it further enacted*, That when any person shall bring and offer such writ of habeas corpus to the officer or person to whom the same shall be directed, he shall receive the same; and upon payment or tender of such charges for bringing the complainant from the place of imprisonment as the Court or Judge who grants the writ shall order, if the person complaining be confined in a common gaol, or under the custody of an officer, otherwise without such payment or tender, to the place mentioned in the writ, such officer or person shall have the body of the complainant before the Court or Judge before whom the writ is made returnable, (unless committed and detained for some one or more of the causes aforesaid) at the place therein mentioned within three days, if within twenty miles from the place of imprisonment; if more than twenty but within one hundred miles, then within ten days; if above one hundred miles, then within twenty days after the receipt thereof and shall then return the same, and certify thereon the true and all the cause or causes of his or her taking and detaining.

Duty of those to whom the writ is directed and nature of the return to be made.

SEC. 4. *Be it further enacted*, That if after the awarding of such writ by any Judge of the said Supreme Judicial

In certain cases if writ be made re-

turnable before a Judge it may be returned to the Court; and *vice versa* in case of adjournment of Court.

Court, in the vacation, but before the return thereof, the said Court shall sit in any county, the said writ, with the body of the complainant and causes of taking and detaining, may be returned, had and certified to the said Court by the Judge who awarded the same: but if, after awarding such writ by the said Court, in term time but before the return thereof, the said Court shall rise, or be adjourned, the same, with the body of the complainant, and causes of taking and detaining, shall be returned, had and certified before some Judge of the said Supreme Judicial Court.

On return of the writ, Court or Judge must, within 3 days, proceed to examine, &c. and bail or commit, as case may require.

SEC. 5. *Be it further enacted,* That when any person shall be brought by writ of habeas corpus as aforesaid before the said Court, or any Judge thereof, such Court or Judge shall within three days after proceed to examine the said causes; and if committed for an offence or cause bailable by law, they shall bail him by recognising him with sufficient surety or sureties in a reasonable sum having regard to his quality and circumstances, and the nature of the offence, to appear at such Court as shall have cognisance of the offence; and shall certify the recognizance into such Court; if committed upon mesne process in any civil action for want of bail and the bail required shall appear excessive, it shall be ascertained what bail is reasonable, and he shall be discharged on giving the same; but if it shall appear that the complainant is imprisoned or restrained without due order of law, or sufficient cause, he shall be discharged from such commitment or restraint.

Penalty on an officer, if he do not deliver his prisoner, in 6 hours, a copy of warrant, &c. by which he is holden.

SEC. 6. *Be it further enacted,* That if any officer, in whose custody any prisoner shall be, shall not within six hours after demand made, deliver such prisoner a true copy of the warrant or process by which he stands committed, such officer shall forfeit to the party grieved, the sum of two hundred dollars.

If any minor be enlisted into U. S. army without consent of parents, &c. any judge of S. J. Court or C. C. Com. Pleas shall issue habeas

SEC. 7. *Be it further enacted,* That if any minor, under the age of twenty one years shall be hereafter enlisted within this State, into the army of the United States without the consent in writing, of his parent, guardian or master, either of the Justices of the Supreme Judicial Court, or of the Circuit Court of Common Pleas, are hereby respectively authorized and required on application therefor, to award a

writ of habeas corpus returnable forthwith, directed to the officer or person restraining such minor; and such Justice or Judge is hereby authorized and required, after a full hearing of the parties who shall appear before him, to discharge such minor so enlisted.

corpus on application therefor:

SEC. 8. *Be it further enacted*, That the Justice or Judge aforesaid is hereby authorized and empowered to inquire into the causes of the imprisonment or restraint of any person brought before him, on such writ of habeas corpus, the return of the officer or person on said writ to the contrary notwithstanding.

Proceedings to be had on such writ.

SEC. 9. *Be it further enacted*, That if any officer or person, to whom any writ of habeas corpus shall be directed shall refuse to receive the same, or, after receipt thereof, shall refuse or neglect to yield such obedience thereto as this Act requires (the complainant performing the conditions required) unless prevented by the sickness of the prisoner, or other necessity, he, for such refusal or neglect, in each and every particular shall forfeit to the party grieved the sum of four hundred dollars; and for any false return to such writ shall be further liable to the action of the party.

Penalty against person to whom the writ is directed, for not receiving and obeying it—or making a false return.

SEC. 10. *Be it further enacted*, That the Court or Judge respectively may further punish every disobedience to such writs as for a contempt, and compel obedience thereto, by process of attachment. And in order to prevent any attempts that might be made to deprive any prisoner of the benefit of his habeas corpus, by shifting the custody of such prisoner from one prison or officer to another or sending him away:

Court or Judge may further punish disobedience to such writ as a contempt.

SEC. 11. *Be it further enacted*, That every person duly ordered to be committed for any criminal or supposed criminal matter, shall be carried as soon as may be, and confined in some common gaol and not elsewhere (except persons sent to the work house or house of correction for due cause) and shall not be delivered from one officer to another, except for the more easy and speedy conveyance of the prisoner to such gaol, nor be removed, without his consent from one county to another unless by habeas corpus, or some other legal writ under the penalty of forfeiting for eve-

Persons, ordered to be committed, to be carried to common gaol, &c. soon as may be—and not confined elsewhere, except—

Penalty for removing prisoners, &c. without habeas corpus,

ry offence to the party grieved, the sum of four hundred dollars.

No person discharged on habeas corpus to be again restrained for same cause, unless, &c.

No penalty in this law to prevent recovery of damages at common law.

Any other person may appear for one secreted, securing costs.

SEC. 12. *Be it further enacted*, That no person enlarged by habeas corpus shall be again imprisoned or restrained of his liberty for the same cause, unless he shall be indicted therefor, or convicted thereof, or shall neglect to find bail when ordered thereunto by some Court of record: *Provided*, That no penalty established by this Act shall be construed to bar any action at common law for false imprisonment or unlawful restraint: And when any person shall be unlawfully carried out of the State, or imprisoned in a secret place, any other person shall be permitted to appear for him in any action brought in his name: *Provided*, Such person shall stipulate for the payment of costs as the Court shall direct.

[Approved February 27, 1821.]

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CHAPTER LXV.

An Act relating to the Writ of Audita Querela, and the proceedings thereupon.

Audita querela, how and from what Courts to be issued.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled*, That in all cases where by law a writ of audita querela lieth, the same may be sued out in the form of a writ of attachment, or a writ of summons, at the election of the complainant: and in all cases where the said writ is brought to set aside or annul any proceedings had upon a writ of execution, the said writ of audita querela shall be sued out of and be returnable to the Court to which the said writ of execution was returnable: and in all other cases the said writ shall be sued out of and be returnable to the Circuit Court of Common Pleas to be holden in such county whereof one of the parties thereto is an inhabitant or resident, unless where the complainant is not an inhabitant or resident within this State; and in such case the said writ may be sued out of and returnable to any Circuit Court of Common Pleas within this State, at the election of the complainant.

Form of writ.

SEC. 2. *Be it further enacted*, That in all cases the said writ of audita querela shall be under the seal of the Court out of which the same shall issue signed by the Clerk thereof, and tested by the first Justice who is not a party to the

same ; and the said writ before the service thereof shall be endorsed by one or more of the complainants, or by his or their attorney, by writing his or their names on the back thereof towards the bottom ; and such endorser shall be liable to pay to the respondent such cost as he shall have final judgment for, in that suit, to be recovered by action of debt. To be endorsed.

SEC. 3. *Be it further enacted,* That the said writ of audita querela may be served upon the adverse party in the same manner as writs of attachment or scire facias are directed by law to be served ; and upon default of the respondent after such service without appearance, the Court may proceed to hear and try the same suit, and thereupon to proceed to final judgment and execution, in the same manner as by law they are authorized when the respondent after appearance becomes defaulted. And in all cases after the said writ is returned served as aforesaid, the Court, in which the suit thereupon is pending, shall have full power to hear and try the said cause, and thereupon to proceed to judgment and execution according as to law and justice doth appertain. Mode of service.

SEC. 4. *Be it further enacted,* That where the said writ of audita querela shall be issued in the form of a writ of attachment with summons, or by original summons, they shall be in form prescribed by law. When issued as writ of attachment—form.

SEC. 5. *Be it further enacted,* That the officer to whom such writ of attachment is directed, shall have the same power and authority and be under the same obligations by virtue of said writ, to attach the body of the respondent or his goods, or estate, as he hath or is under by virtue of any other writ of attachment sued out pursuant to the laws of this State and to him directed ; and in the same manner and under the same restrictions and regulations, as are by law provided in other cases, the body of the respondent shall be holden to bail and the goods or estate so attached be liable to be taken in execution. Power and duty of officer.

SEC. 6. *Be it further enacted,* That where the complainant in any writ of audita querela may, by other subsequent action at law, recover of the respondent any recompense in damages or otherwise, for the wrongs done him by the service Damages may be recovered in certain cases.

of such execution for the setting aside and annulling of the proceedings upon which the said writ of audita querela is brought, in all such cases the complainant may have the same remedy upon his writ of audita querela and in his declaration therein may declare for the same recompense in damages or otherwise, and judgment shall be rendered and execution issue thereupon accordingly.

Form of plead-
ings.

SEC. 7. *Be it further enacted*, That the general issue in all actions prosecuted on writs of audita querela may be the plea of not guilty; and upon such plea being duly pleaded by the respondent, either party may give any special matter in evidence by which the truth and justice of the cause may be known: *Provided nevertheless*, That the respondent may plead any special matter in bar or the said general issue at his election.

Appeal allow-
ed from C. C.
C. Pleas to S.
J. Court.

SEC. 8. *Be it further enacted*, That in cases where the writ of audita querela is returnable to the Circuit Court of Common Pleas in any county within this State, and judgment given in said Court, the party grieved thereat may appeal to the Supreme Judicial Court of this State, next to be holden within the same county, the said appeal to be granted and prosecuted under the same regulations and restrictions as appeals in other actions from the judgment of any Circuit Court of Common Pleas, are to be granted and prosecuted; and when the appellant shall fail to prosecute his appeal with effect, the Supreme Judicial Court may upon complaint filed by the appellee affirm the judgment rendered by the Circuit Court of Common Pleas with additional damages and costs, and award execution accordingly.

Court may lib-
erate plaintiff,
from prison,
on certain con-
ditions.

SEC. 9. *Be it further enacted*, That in cases where the complainant in such writ of audita querela is in gaol by virtue only of such execution, the Court to which such writ is returnable, or the Supreme Judicial Court upon the appeal may at their discretion, according to the circumstances of the case, enlarge and liberate the complainant from gaol and admit him to bail, upon his sureties (being sufficient freeholders within the State to be approved of by the Court,) giving bond, together with the complainant jointly and severally to the respondent, in such penalty as shall be direct-

ed by the Court, conditioned, if final judgment be rendered for the respondent, that the complainant shall within thirty days after the entering such final judgment, surrender himself to the gaol keeper to be detained in custody under the same execution, or within that time satisfy the same execution, and also such final judgment as shall be rendered as aforesaid for the respondent. And if the said complainant shall surrender himself to the gaol keeper as aforesaid, he shall be in custody under said execution, as fully and to all intents and purposes as if the said writ of audita querela had not been brought nor the said complainant admitted to bail.

Approved January 23, 1821.

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CHAPTER LXVI.

An Act establishing the Right to the Writ for replevying a Person.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That every person within this State, who shall be imprisoned, confined, or held in duress, shall be entitled as of right, to the writ for replevying a person, and to be thereby delivered; unless, while the writ of habeas corpus is suspended by the Legislature, he shall stand committed by the special order of the Supreme Executive Power of the State as dangerous to the public safety, or by the same, or by some subordinate authority of the government, for treason, the death of man, counterfeiting the common currency, house burning, burglary, robbery, or some other offence, for which if he is convicted, he may suffer death or banishment, or unless he is held in execution upon judgment of debt, forfeiture, withernam, or by distress for taxes, or under sentence after conviction, for fine, costs or in punishment. And where any person stands committed by lawful authority for any crime for which he may not suffer death, or otherwise than is above in this Act specified, the writ shall be in form prescribed by law.

Who are entitled to the writ.

SEC. 2. *Be it further enacted*, That if the plaintiff stands committed for any crime not before in this Act mentioned, or for any other offence, whereof if he is convicted, he may not have sentence of death or banishment thereof passed up

Writ in certain cases to issue from S. J. Court—

on him, he shall have his writ from the Clerk of the Supreme Judicial Court fourteen days before the return day of the same; and the same writ shall be made returnable in the same county where the imprisonment happens, and unto the next Supreme Judicial Court, to be there holden: but if he is held by any person without due order of law, he shall have his writ from the Clerk of the Circuit Court of Common Pleas of the county wherein he is held returnable, fourteen days at the least from the day of the date; and where the plaintiff is delivered by a writ returnable into the Supreme Judicial Court, having been committed for any offence, and from which commitment he is replevisable, he shall, before he is delivered, recognise before the Sheriff of the county, in person, with sufficient surety or sureties in a reasonable sum for his appearance at the same Court, to answer, abide and perform the order and sentence of the same; which recognisance shall be returned into Court by the Sheriff; and when the plaintiff shall be delivered by a writ returnable into the Circuit Court of Common Pleas, he shall before his deliverance give bond to the use of the defendant with sufficient surety or sureties, at the discretion of the Sheriff, to appear at the Court to which the writ is returnable; and there to prosecute his replevin against the defendant, to have his body there ready to be re-delivered, as the Court shall order, and to pay all damages and costs that may be awarded against him; and the Sheriff shall be answerable, if the sureties shall prove insufficient, unless they are such as the defendant agrees to.

In what cases
the plaintiff
shall not be set
at liberty.

SEC. 3. *Be it further enacted*, That if the plaintiff shall not prosecute, or in prosecuting, shall be unable to support his replevin, then the defendant shall recover his reasonable costs; and if it shall be found, upon the trial, that the plaintiff is the ward or infant of the defendant, or that he the said defendant is entitled to the service of the plaintiff, or that the defendant is bail to the plaintiff, then the defendant shall have judgment against the plaintiff for a re-delivery of his body and for such damages as the Jury shall assess against the plaintiff, with reasonable costs.

If Sheriff re-
turn that de-
fendant has

SEC. 4. *Be it further enacted*, That if the Sheriff shall return upon the writ, for replevying a person, issuing from

the Circuit Court of Common Pleas, that the defendant hath elained the plaintiff's body, so that he cannot deliver him, then the plaintiff shall on motion to the Court, have a capias in withernam to take the defendant's body, and to keep the same until he shall produce the plaintiff to be delivered according to the commandment of the original writ: *Provided nevertheless*, That if the defendant shall give full and sufficient bail for his appearance at the Court whereunto the writ is returnable, then and there to traverse the return of the Sheriff upon the writ for replevying a person, that the Sheriff shall take such bail; or if the defendant cannot procure such bail, and is thereupon committed by the Sheriff, he may nevertheless at the next term (and not afterwards) be allowed to traverse the Sheriff's return of elongation, or to plead any matter of justification in the same manner as he might have done to the original replevin: and if the Jury shall not find that he is guilty of elaining the plaintiff as set forth in the return, or if they find that the justification is supported, the defendant shall be allowed his costs against the plaintiff; but if the defendant will not traverse the return, and put himself upon the county; or if upon traversing the same, he shall be found guilty of the elongation of the plaintiff; or if upon pleading a justification, he shall not support the same, then the Court shall order him into the custody of the Sheriff, and shall issue an alias writ of withernam to hold him, until he shall produce the body of the plaintiff, or until he can prove that the plaintiff is dead; which fact may be tried at any term of the same Court, and in the same county, by a Jury upon the information and at the expense of the defendant. And the original writ of withernam shall be in form prescribed by law.

SEC. 5. *Be it further enacted*, That in any stage of the proceedings upon process pursuant to this Act, any person shall be permitted to appear for the plaintiff, who will stipulate as the Court shall direct for the payment of all costs and damages that may be awarded against the plaintiff, although he can produce no special power for that purpose.

[Approved January 27, 1821.]

eloined plaintiff's body—
what proceedings shall be had.

Any person, stipulating for damages may appear for plaintiff.

CHAPTER LXVII.

An Act regulating Bail in Civil Actions.

Officer to re-
turn bail bond
with writ.

Name of bail
to be inserted
in margin of
execution.

Officer to no-
tify bail, &c.
15 days before
return day.

Officer's fees.

Bail may com-
mit principal,
&c.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when bail is given in any civil action for the appearance of the party to answer the suit and to abide the order and judgment of the Court thereon, the officer who served the writ, shall return the bail bond taken by him, with the original writ to the Court or Justice before whom the same may be returnable, and if judgment be obtained against the defendant, in any such action, the Clerk of the Court or Justice of the Peace who may issue execution on said judgment, shall on the margin of said execution insert the names of the persons who became bail in said action, with the places of abode, and addition of said bail: *Provided*, The same be named in the bail bond, and the officer who may receive said execution shall notify the bail personally, or by leaving a written notice signed by said officer, at the usual places of abode of the bail, if living within the county in which said officer lives, at least fifteen days before the expiration thereof, certifying that he cannot find the principal debtor, nor whereof to satisfy said execution, for which notice, said officer shall have a right to demand, recover and receive of, and from said bail the usual fees for service of writs, with travel from the officer's dwelling house to that of the bail, calculated on the road most usually travelled, and shall minute in said notice the amount of said fees, which the bail shall pay in twenty days, unless the bail shall at least one day before the execution is returnable, produce and deliver to the officer the principal debtor for whom bail was given; and it shall be lawful for the person, who may have become, or may hereafter become bail, to commit to the common gaol in the county where such arrest was made, or in that to which the writ is returnable, the principal for whom he has become bound, leaving with the gaoler or prison keeper of such county within fifteen days after such commitment, an attested copy of the writ or process, whereby the arrest was made, and of the return endorsed; and such gaoler or pris-

on keeper is hereby authorized and required to receive the person so committed into custody, in the same manner as if he had been committed by the officer making the arrest; and the person so committed shall be entitled to the liberties and privileges of the prison limits upon the same terms and conditions, and under the same restrictions as are provided where the principal is committed by order of Court. And the bail so committing their principal shall ever after be discharged from the bail bond by them given: *Provided however*, That no person shall have the benefit of the foregoing provision of this Act, unless he shall have committed his principal as aforesaid, before final judgment upon *scire facias*; and if the commitment shall have been made after the writ of *scire facias* shall have issued he shall pay the costs of that suit before he shall be discharged: *And provided, also*, That any bail, who shall claim a discharge under this section, shall have notified in writing the plaintiff in the original suit, or his attorney of the time when and the place where the principal has been committed, within fifteen days from the time of such commitment.

Duty of gaoler.

Proviso.

SEC. 2. *Be it further enacted*, That every person who shall thus become bail, may at any time before final judgment upon the original suit, bring the principal into Court and deliver him into the custody thereof, and be thereby discharged of his suretyship. And in case of the principal's avoidance and the return of *non est inventus* upon the execution, the bail shall be obliged to satisfy the judgment out of his own estate, unless he shall have discharged himself in some one of the modes provided in this Act. And no return of *non est inventus* made by any officer on any execution shall be considered as evidence of the debtor's avoidance so that the bail may be rendered liable on *scire facias*, unless such officer shall certify on such execution, that he has had the same in his hands at least thirty days before the expiration thereof.

Bail may bring principal into Court and be discharged.

Bail liable if principal avoid.

No return of avoidance good unless execution is in officer's hands 30 days before return day.

SEC. 3. *Be it further enacted*, That when the principal shall avoid, so that his goods, chattels or lands cannot be found to satisfy the execution, nor his body found to be taken therewith, the person for whom judgment was given shall be entitled to his writ of *scire facias* from the same

Plaintiff may have *scire facias* against the bail, and judgment,

unless bail
bring in the
principal be-
fore judgment,
pay costs, &c.

Debtor dis-
charged from
gaol unless ta-
ken in execu-
tion in 15
days.

Proceedings in
case of bail in
actions before
a Justice.

Bail may bring
principal be-
fore Justice
and procure
an officer to
attend;

Court against the bail. And in case no just cause is shown, judgment shall be given against them for the damages and costs recovered against the principal, with additional damages and cost, and execution shall be awarded against them accordingly: *Provided nevertheless*, That if the bail shall bring his principal into Court before judgment is given upon the *scire facias*, and there deliver him to the order of the Court and shall pay the costs which may have then arisen upon the *scire facias*, then the bail shall be discharged; and the principal shall be committed to gaol, there to remain for the space of fifteen days in order to his being taken in execution. And if the creditor shall not, within fifteen days next after the surrender of the principal take him in execution, the Sheriff shall discharge him upon his paying the legal prison fees.

SEC. 4. *Be it further enacted*, That whenever bail shall hereafter be taken on mesne process in any civil action, triable before any Justice of the Peace, and there shall have been a return of *non est inventus* upon the execution which issued on a judgment rendered on such process, the said Justice may proceed, within one year from the rendition of such judgment, to issue a *scire facias* upon the same judgment against such bail, which writ being duly served seven days at least before the time therein set for trial and returned, the said Justice may proceed to take cognizance thereof; and if no just cause is shown to the contrary, to render judgment against such bail for the debt or damage, and costs recovered against the principal, with additional damages and costs and to issue execution accordingly. And it shall be no bar to such *scire facias*, that the debt and costs on the original judgment, when added together, exceed the sum of twenty dollars; but the plaintiff shall be entitled to receive his costs of suit as in other cases on such *scire facias*.

SEC. 5. *Be it further enacted*, That if the bail shall, at any time before final judgment upon the original suit is rendered against him, or upon the return of such *scire facias*, and before judgment thereon shall be rendered against him, bring his principal before such Justice, and shall procure the Sheriff of the county, or his deputy, or any Constable of the town wherein such Justice may reside, to attend and re-

ceive him, said Justice shall thereupon order him into the custody of such officer; and the principal shall be committed to gaol, and there remain and be proceeded with as is provided in this Act; and upon the payment of the costs which may have arisen on such *scire facias*, the bail shall be discharged from their suretyship as in other cases.

Justice may commit him to such officer, and bail be discharged, paying costs :

SEC. 6. *Be it further enacted*, That when any principal, surrendered as aforesaid, shall be ordered into custody, the said Justice shall make out, and deliver to the officer receiving him, a warrant or mittimus, of the tenor following, to wit :

In such case Justice to give mittimus to officer.

State of Maine.

—, ss. To the Sheriff of the county of —, or his deputy, or to any Constable of the town of —, and to the Keeper of the gaol in said county, Greeting.

(SEAL.) Whereas A. B. of C. in said county [addition] at a Court this day holden before me, has been surrendered by D. E. of F. in said county —, who was bail for the said A. B. in an action wherein one G. H. was plaintiff and the said A. B. was defendant, you, the said Sheriff, Deputy Sheriff, and Constable, are severally required to receive the said A. B. into your custody, and him forthwith to convey to the common gaol of said County; and you the said keeper are hereby required to receive the said A. B. in order to his being taken in execution upon the suit aforesaid. Hereof fail not; and of this warrant and your doings thereon, you are to make due return to myself, and as soon as may be. Given under my hand and seal, the — day of —, Anno Domini —. — Justice of the Peace.

Form of mittimus.

And if the plaintiff shall not within fifteen days next after such surrender, in case the same shall be made upon *scire facias*, or if the same shall be made upon the original process, then within fifteen days next after final judgment, take the said principal in execution, he shall be discharged upon his paying the legal prison fees.

Debtor, if not taken in execution in 15 days to be discharged.

SEC. 7. *Be it further enacted*, That it shall be the duty of any officer as aforesaid upon the request of such person or persons being bail as aforesaid, to repair to said Justice's Court, in order to receive the principal as aforesaid; and such officer shall be allowed and paid by the bail for his re-

Penalty for officer's refusing to attend before Justice.

ceiving and committing said principal on said warrant or mittimus, the same fees as are provided by law for committing any defendant to prison on mesne process. And all and every such officer or officers, shall have the like power and authority, and shall be under the like obligations in all respects and regards whatsoever, to execute and return such warrant or mittimus, issued by such Justice, upon the surrender as aforesaid, as he or they by law have and are under to execute and return any writ or execution whatever; and shall be subject and liable to all the like action or actions, for any fraud or falsehood and neglect of their duty, as is provided by law in other cases.

Limitation of
scire facias
against bail.

SEC. 8. *Be it further enacted*, That no *scire facias* shall be served upon the bail, unless it be done within one year next after the entering up final judgment against the principal.

Remedy of
bail against
principal.

SEC. 9. *Be it further enacted*, That the bail may have their remedy by action on the case against their principal for all damages sustained by their becoming his sureties.

[Approved March 19, 1821.]

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CHAPTER LXVIII.

An Act respecting Bailable Offences.

Who may ad-
mit persons to
bail.

Who may be
bailed.

Extent of the
power to bail.

BE *it enacted by the Senate and House of Representatives in Legislature assembled*, That any one or more of the Justices of the Circuit Court of Common Pleas, or any two Justices of the Peace and of the quorum for any county, on application made to them by any person who now is, or hereafter may be, confined in gaol for a bailable offence, or for not finding sureties, on recognisance, may proceed to inquire into the same, and admit any such person to bail; and for this purpose shall have and exercise the same power concurrently, which any one or more of the Justices of the Supreme Judicial Court, may or can do; any law, usage or custom to the contrary notwithstanding. And the power hereby given shall be considered to extend to taking the recognisance of any person, committed after conviction, where the sentence is in part, or in whole, to find sureties for good behaviour. [Approved March 10. 1821.]

CHAPTER LXIX.

An Act directing and regulating the Process of Outlawry.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any person that now is charged, or hereafter shall stand charged of any criminal offence before the Supreme Judicial Court of this State, by the indictment or presentment of a Grand Jury, whether the same indictment or presentment be originally found in that Court, or removed thither from any inferior jurisdiction, by appeal, or writ of certiorari, shall abscond to avoid answering, or abiding and performing the judgment that may be given thereon, whether such absconding be before or after the Jury shall indict or present the offender, a writ shall issue to the Sheriff of the county where such offender was an inhabitant or resident, at the time of finding the same bill, directing him to make known unto such offender, that unless he shall appear on the first day of the next sitting of the said Supreme Judicial Court, and there traverse the same charge, and abide the judgment that may be given thereon, or appear and give such security therefor by way of recognisance as the said Court shall order, such person will then and there be declared an outlaw, and be subjected to all the penalties and disabilities in this Act declared to be incident to a person under sentence of outlawry, and the mode of executing the said writ of scire facias shall be, by leaving an authenticated copy thereof certified by the Sheriff at the offender's dwelling house or last place of abode, sixty days at the least before the same process shall be returnable, and shall cause an abstract or notification of the subject matter in the same writ mentioned, sixty days before the return day at the least, to be printed in one of the most public weekly newspapers, and to be continued five several weeks inclusive; and shall cause him to be publicly called in every Circuit Court of Common Pleas in his county, that shall be holden while the same process shall be in his custody; which writ of scire facias being served and returned in manner aforesaid, and filed in Court, shall be entered on the docket, and the party against whom the same is sued, after having been publicly called in the

Persons liable to the process of outlawry.

Form of writ and nature of proceedings against him.

said Supreme Judicial Court, to appear and answer the charge alleged against him as aforesaid; if he shall not appear upon such notice and proclamation, his default shall be recorded, and such offender may by the same Court be declared an outlaw, without any other act or ceremony; any former law usage or custom to the contrary notwithstanding: *Provided always*, It shall be in the power of the said Court, when the offence charged shall be by law bailable, to continue the same scire facias, or suspend passing judgment of outlawry thereon, until the next or some succeeding term, in case sufficient bail shall be given for the offender's answering and abiding the judgment of the said Court thereon. And that it may regularly and certainly be determined when a person may be said to have absconded to escape punishment:

When a person has appeared and pleaded to indictment, &c. and departed without leave—proceedings against him.

SEC. 2. *Be it further enacted*, That any person after having appeared and pleaded to an indictment or presentment, who shall have departed without leave of the Court, or shall have broken gaol after commitment upon, and before conviction on the charge alleged in the bill, or shall fail or neglect to appear and answer according to the tenor of a recognisance regularly taken for that purpose, or when the Sheriff of the same county whereof the offender was an inhabitant, or resident at the time of his committing the offence for which he shall stand indicted, or his deputy, shall make return upon a capias issued in consequence of the bill, wherein the term of four months at the least shall have elapsed, between the issuing the capias and the return day thereof, that after making diligent search and inquiry after such offender, he could not find him in his precinct, shall be deemed and taken as sufficient evidence of the absconding of such person within the intent of this Act.

If non est inventus be returned on the capias and alias capias issued from C. C. Pleas—no like process need issue from S. J. Court.

SEC. 3. *Be it further enacted*, That a capias and an alias capias issued from the Circuit Court of Common Pleas, on a bill of indictment or presentment there found, wherein fifty days at the least shall have elapsed between the issuing and return of the same writs respectively, and returned by the proper officer, that after diligent search and inquiry after such offender he could not find him in his precinct, before the removal of the record into the Supreme Judicial Court, shall render the issuing a like process in the Su-

preme Judicial Court before scire facias ut legatum unnecessary.

SEC. 4. *Be it further enacted*, That where a capias shall issue from the Supreme Judicial Court, to apprehend an offender on a bill of indictment or presentment in any county where the said Court shall be held but once a year, the same capias may be made returnable to some session of the said Court in some other county, at the expiration of five or six months, if the said Court shall so order, to the end scire facias ut legatum may timely issue returnable to the next term, if the offender should not be taken on the capias.

How capias from S. J. Court is to be made returnable.

SEC. 5. *Be it further enacted*, That all persons against whom judgment of outlawry shall be given, shall during the time the same judgment shall continue in force, be, and hereby are disabled from bringing or maintaining, in their own right any civil action or suit, in any Court of Law or Equity within this State, excepting a writ of error for reversing his outlawry; and shall be under such other disabilities and disqualifications in civil society as a person convicted and sentenced for the offence charged in the bill upon which he may be outlawed: and in all cases where a greater forfeiture does not by law accrue to the State upon a conviction and judgment on such bill of indictment, shall forfeit the issues and profits of all his real estate during the life of the outlaw, in case the judgment of outlawry shall so long remain in force; and be further liable to be apprehended, upon capias ut legatum, and sentenced in the same manner as if he was convicted by a Jury of the charge alleged in the bill.

Persons against whom a judgment of outlawry is in force—how far disqualified.

SEC. 6. *Be it further enacted*, That the real estate of every person outlawed, shall be held liable, and be bound, from the time of issuing the scire facias ut legatum to respond the judgment that shall be given on the indictment or presentment, so far as relates to the fine and cost.

Real estate of a person outlawed, bound to respond judgment, &c.

SEC. 7. *Be it further enacted*, That the lands and tenements of all persons recognising to the use of this State, before any authority duly authorized and empowered to take the same, are and shall be liable to respond the sum mentioned in the same recognisance, from the time the same is taken and acknowledged, notwithstanding any transfer or alienation thereof.

Estate of persons recognising to State, also bound, though alienated.

Proceedings
when a person
outlawed ap-
pears in Court
and confesses
or traverses,
&c.

SEC. 8. *Be it further enacted,* That every offender that may be outlawed, upon his appearing in open Court, and confessing the charge, and receiving sentence thereon, or appearing and traversing the charge, shall be acquitted by a Jury or on demurrer, or any other plea, the same shall be adjudged insufficient in law to compel the person accused to answer thereunto, or support a judgment thereon : in every such case, the proceeding shall be construed to operate as a full and effectual reversal of the judgment of outlawry as though a formal reversal had been given upon a writ of error expressly brought for that purpose : *Provided,* The appearance upon which such acquittal shall be given shall be voluntary and without compulsion, and within one year and a day after judgment of outlawry shall be pronounced, and the cost accruing on the process of outlawry shall be first satisfied and paid. [Approved February 24, 1821.]

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CHAPTER LXX.

An Act for regulating Marriage, and for the orderly solemnization thereof.

Degrees, with-
in which mar-
riages are void,
as incestuous.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That no man or woman shall intermarry within the degrees hereafter named, that is to say :

No Man shall marry his
Mother,
Grandmother,
Daughter,
Son's Daughter,
Daughter's Daughter,
Step Mother,
Grandfather's Wife,
Son's Wife,
Son's Son's Wife,
Daughter's Son's Wife,
Wife's Mother,
Wife's Grandmother,
Wife's Daughter,
Wife's Son's Daughter,
Wife's Daughter's Daughter,
Sister,
Brother's Daughter,
Sister's Daughter,
Father's Sister,
Mother's Sister.

No Woman shall marry her
Father,
Grandfather,
Son,
Son's Son,
Daughter's Son,
Step Father,
Grandmother's Husband,
Daughter's Husband,
Son's Daughter's Husband,
Daughter's Daughter's Husband,
Husband's Father,
Husband's Grandfather,
Husband's Son,
Husband's Son's Son,
Husband's Daughter's Son,
Brother,
Brother's Son,
Sister's Son,
Father's Brother,
Mother's Brother.

And if any man or woman shall intermarry within the degrees aforesaid, every such marriage shall be deemed, taken and adjudged incestuous, and shall be null and void.

SEC. 2. *Be it further enacted,* That all marriages, where either of the parties shall have a former wife or husband living at the time of such marriage, and all marriages between any white person and any Negro, Indian or Mulatto shall be absolutely void.

Certain other marriages to be void.

SEC. 3. *Be it further enacted,* That every Justice of the Peace, and also every ordained Minister of the Gospel, who shall be duly appointed and commissioned for that purpose by the Governor, with the advice of Council, be, and they respectively are authorized and empowered to solemnize marriages within the county, where they reside, between persons who may lawfully enter into that relation, when one or both of the parties are resident within the county in which such Justice or Minister resides.

Persons authorized to solemnize marriages.

SEC. 4. *Be it further enacted,* That the Governor with the advice of Council be, and he is authorized to appoint and commission such ordained Ministers of the Gospel, as the public good may require, to solemnize marriages within the county in which they may reside, who shall hold the said office during his pleasure: and said commission shall be conclusive evidence, that the person therein named is an ordained Minister of the Gospel; and whenever said commission shall be revoked, an attested copy of such revocation shall be filed in the office of the Clerk of said county.

Governor to appoint and commission ordained ministers to marry.

SEC. 5. *Be it further enacted,* That all persons desiring to be joined in marriage, shall have such their intentions published at three public religious meetings, on different days, at three days distance exclusively, at least, from each other, in the town or plantation wherein they respectively dwell; or shall have their intentions of marriage posted up by the Clerk of such town or plantation, fourteen days in some public place, within the same town or plantation, fairly written; and shall also produce to the Justice or Minister, who shall be desired to marry them, a certificate of such publishment, under the hand of the Clerk of such town or plantation respectively; and where a male under twenty one years, or a female under eighteen years of age, is to be married, the

Intentions of marriage to be published, &c.

Certificate to be delivered to Minister or Justice.

Consent of parent or guardian necessary in certain cases.

Publishment
in adjoining
town in case.

consent of the parent, guardian or other person, whose immediate care and government such party is under, if within the State, shall be first had to such marriage. And in case the parties or either of them, live in a town or place, where there shall be no Clerk, then publishment shall be made in the town next adjoining, in manner aforesaid, and a certificate from the Clerk of the same town, of such publishment, shall be produced as aforesaid, previous to their marriage.

If banns are
forbidden
what proceed-
ings must be
had.

SEC. 6. *Be it further enacted*, That if at any time the banns of matrimony betwixt any persons shall be forbidden, and the reasons thereof assigned, in writing, by the person so forbidding the same, left with the town or plantation Clerk, he shall forbear issuing a certificate as aforesaid, until the matter shall have been duly inquired into, and determined before two Justices of the same county, quorum unus: *Provided*, The person forbidding the banns, shall, within seven days after filing the reasons as aforesaid, apply unto two Justices as aforesaid, and procure their determination thereon: unless the said Justices shall certify unto the said Clerk, that a further time is necessary for their determination on the reasons filed; in which case the Clerk shall forbear issuing a certificate, until the time then certified to be necessary shall expire, unless the Justices shall sooner determine; according to whose determination, the Clerk shall govern himself herein; and if the said Justices shall determine, that the reasons assigned by the person forbidding the said banns, were not supported by the laws of the State, then the person so forbidding shall pay all the costs that may have arisen in consequence of such objection; and the said Justices shall make up judgment and issue execution accordingly.

Penalty for
pulling down
publishment.

SEC. 7. *Be it further enacted*, That if any person shall deface or pull down any publishment posted up in writing as aforesaid, before the expiration of the said fourteen days, he shall forfeit and pay the sum of four dollars, to the use of the town. And if any Justice of the Peace or Minister, shall, otherwise than is expressly allowed and authorized by this Act, join any persons in marriage, they shall severally forfeit and pay the sum of one hundred dollars, two third parts

For marrying
persons con-
trary to law.

thereof to and for the use of the county wherein the offence may be committed, and the residue to the prosecutor, to be sued for and recovered in the Circuit Court of Common Pleas, within the same county, by the Treasurer thereof, who is hereby enjoined upon due information thereof, to prosecute and sue for the said penalty without delay, or by the parent, guardian, or other person under whose immediate care and government either of the parties were at the time of such marriage; and every Justice or Minister, against whom such recovery shall be had, is hereby forbidden from joining persons in marriage forever after. And in case a person forbid as aforesaid, or any other person whatever, not authorized and empowered to solemnize marriages by this Act, shall join any persons in marriage, and be convicted thereof, in the Supreme Judicial Court, upon presentment or indictment, he shall suffer solitary imprisonment for a term not exceeding twenty days, and be confined to hard labor for a term not exceeding five years.

Punishment of those who solemnize marriages not being authorized.

SEC. 8. *Be it further enacted*, That every Justice and Minister shall make and keep a particular record of all marriages solemnized before them respectively; and in the month of April yearly and every year, shall make a return to the Clerk of the town or plantation in which he lives, certifying the names of all the persons, who have been by them respectively joined together in marriage within the year then last past, if any such have been by them so joined together. And if any Justice or Minister shall neglect to make such return, within the month of April annually, he shall forfeit the sum of fifty dollars, to be recovered by action of debt in the Circuit Court of Common Pleas, one half thereof to the use of the county, and the other half to the use of the person who may sue for the same.

Justices and ministers to keep record of marriages and make return to town clerk.

Penalty for neglect.

SEC. 9. *Be it further enacted*, That any marriages which shall be had and solemnized, among the people called Quakers or Friends, in the manner and form used and practised in their societies, shall be good and valid in law, any thing in this Act to the contrary notwithstanding. And the clerk or keeper of the records of marriages shall be authorized to issue a certificate under his hand and seal, in and to the effect following, to wit: That the marriage of _____ and _____ was solemnized by _____ a Justice of the Peace for the County of _____ on the _____ day of _____ 18____.

Marriages among Quakers, according to their forms, valid.

Penalty for neglect.

ed in the society or meeting to which he belongs, and shall deliver the same to the Clerk of the town, in which the Clerk of said meeting resides; and if he shall neglect so to do, he shall forfeit the sum of fifty dollars, the one half to the use of the county, and the other half to the use of the prosecutor, to be recovered by an action of debt.

No minister, not commissioned, to marry after May, 1, 1821.

SEC. 10. *Be it further enacted*, That no Minister of the Gospel, not appointed and commissioned as aforesaid, shall solemnize any marriage after the first day of May next.

[Approved February 19, 1821.]

CHAPTER LXXI.

An Act regulating Divorces.

Sup. J. Court to decide all questions of Divorce and Alimony.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That all questions of divorce and alimony shall be heard and tried by the Supreme Judicial Court holden for the county where the parties live, and that the decree of the same Court shall be final.

Libel to be filed in Clerk's office, and opposite party, to be served with copy if in the State—

SEC. 2. *Be it further enacted*, That no cause of divorce or alimony shall be brought before the same Court, unless the party suing or complaining shall file his or her libel in the office of the Clerk of the said Court, therein setting forth the cause of his or her complaint specially, and shall cause the other party, if in this State, to be served with an attested copy of the same, and with a summons to appear at the Court, fourteen days at least before the sitting of said Court where the cause is to be tried; otherwise, in such manner as the said Court shall direct; and the said Court shall have all the powers necessary to the conducting and finally issuing such causes, according to the true intendment of this Act.

If not, such notice must be given as the Court may order.

Divorces from bond of matrimony, in what cases decreed.

SEC. 3. *Be it further enacted*, That divorces from the bonds of matrimony shall be decreed, in case the parties are within the degrees by law prohibited, or either of them had a former wife or husband alive at the time of solemnizing such second marriage, or for impotency or adultery in either of the parties, and for no other cause; and that divorce from bed and board may and shall be granted for the

In what cases from bed and board.

cause of extreme cruelty in either of the parties, or whenever any husband shall utterly desert his wife, or shall grossly or wantonly and cruelly neglect or refuse to provide suitable maintenance for her, being of sufficient ability thereto.

SEC. 4. *Be it further enacted*, That when it shall appear that the adultery or cruelty complained of, is occasioned by the collusion of the parties, and done with an intention to procure a divorce, or that both parties have been guilty of adultery, in such case, no divorce shall be decreed.

In cases of collusion, or adultery of both parties, no divorce to be decreed.

SEC. 5. *Be it further enacted*, That when a divorce shall be had for the causes of affinity, consanguinity, or of impotency of either of the parties, the wife shall have restored to her all her lands, tenements and hereditaments; and a judgment may be passed for a restoration to her of all, or such part of the personal estate specifically, or the value thereof, which hath come to her husband's hands by force of the marriage, as the Justices of the Supreme Judicial Court, from all the circumstances of the case, shall determine equitable; and they may make use of such kind of process to carry their judgment into effect, as shall be necessary; and the Court, in case they think proper, may compel the husband to disclose, on oath, what personal estate he hath received in right of his wife, and how the same hath been disposed of, and what proportion thereof remained in his hands at the time of such divorce: and when the divorce shall be for the cause of adultery committed by the husband, in addition to her dower, to be assigned her in the lands of her husband, in the same manner as if such husband was naturally dead, and to the real estate which her husband held in her right, the Court by whom such divorce may be decreed, shall have power to assign to the wife for her own use, all the personal estate which the husband hath received by reason of the marriage, or such part thereof as shall be just and reasonable, under all the circumstances of the case, or a sum of money equal in value to the whole of the said personal estate; or to so much thereof as the Court may judge proper should be so assigned to her. But if the personal estate or money which the Court are by this Act authorized to assign to the woman so divorced, together with her dower in

In cases of divorce for affinity, consanguinity or impotency, wife shall have all her lands restored to her.

Court may restore to her such part of her personal estate, as they think proper.

And may compel husband to disclose on oath an account of property.

When divorce is decreed, for adultery of husband, wife to have dower, the real estate held in her right and all or part of the personal estate received of her by her husband, as Court may order.

And if these be insufficient, Court may allow her alimony —

out of her husband's estate.

In cases of divorce for adultery of wife, what the husband shall hold.

Proviso.

In case of divorce for cruelty or desertion of husband, what proceedings shall be had as to property.

On application of either party Court may make alterations as to alimony, restorations, &c.

In case of libel by wife for divorce from bed and board and service on husband, his lands, &c. held to answer, &c. in case divorce be decreed.

her husband's real estate, should be insufficient for her reasonable and comfortable support, then the Court may allow her reasonable alimony out of her husband's estate, so long as she shall remain unmarried, in the same manner as alimony may be allowed to a woman divorced from bed and board, for the cause of extreme cruelty in the husband: regard to be had, in making such allowance, to the character, circumstances and property of the husband, and the character and situation of the wife. And where the divorce shall be occasioned by adultery committed by the wife, the husband shall hold her personal estate forever, and her real estate during his natural life, in case they have had issue born alive of her body during the marriage; otherwise during her natural life only, if he shall survive her: *Provided nevertheless*, That the Court may allow her for her subsistence so much of such personal or real estate as they shall judge necessary. And whenever a decree of divorce from bed and board shall be made because of the cruelty of the husband or of his utterly deserting his wife, or grossly or wantonly and cruelly neglecting or refusing to provide suitable maintenance for her, being of sufficient ability thereto, the wife, if there be no issue living at the time of the divorce, shall be restored to all her lands, tenements and hereditaments, and shall be allowed out of his personal estate such alimony as the Court shall think reasonable, having regard to the personal property that came to the husband by the marriage, and to his ability; but if there be issue living at the time of the divorce, then the Court, with respect to ordering restoration, or granting alimony as aforesaid, may do as they shall judge the circumstances of the case may require; and upon application from either party, may from time to time, make such alterations therein as may be necessary. And whenever the wife shall file in the Clerk's office a libel against her husband praying for a divorce from bed and board for any of the causes mentioned in this Act, and shall cause the same to be served on him, all his lands within the State shall be considered as attached and bound to answer the order or judgment of the Court, in case a divorce is decreed upon said libel; and in such cases the Court may order and adjudge, that the whole or any part of

the real estate of the husband, or of the rents and profits of the same, shall be assigned and set off to the wife, for and during her life, and may make use of such process to enforce such judgment, as may be deemed necessary and proper. And in case a divorce shall be decreed for cruelty in the wife, whether there shall be issue or not of the marriage, at the time of the divorce, the Court may order to her a restoration of the whole, or such part of her lands, tenements and hereditaments, and may also assign alimony as they may judge proper.

In case divorce be decreed what proceedings shall be had as to property.

In case of divorce for the cruelty of wife, what proceedings shall be had as to property.

SEC. 6. *Be it further enacted*, If any persons who shall be divorced for the cause either of affinity or consanguinity shall, after such divorce, cohabit together, such persons so offending shall be liable to all the pains and penalties provided by the laws then in being against incest; and if any persons shall cohabit or live together in the same house after a divorce, for the cause of prior marriage or adultery, such persons shall be liable to all the pains and penalties provided by the laws then in being against adultery. *Provided always*, That no decree of divorce for or on account of adultery, shall bar the issue of such marriage from inheriting; but the question of the right of such child or children to inherit shall be tried and settled upon the principles of common law, in the same manner as though this Act had never been made.

Punishment for cohabiting or living in the same house after divorce from bond of matrimony.

Decree of divorce for adultery not to bar children of their inheritance.

[Approved February 10, 1821.]

CHAPTER LXXII.

An Act for the maintenance of Bastard Children.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That whenever any woman who hath been delivered of a bastard child, or being pregnant with a child which if born alive, may be a bastard, shall accuse any man of being the father thereof before any Justice of the Peace and desire a prosecution against the man whom she accuses of being the father of the child, the Justice shall then proceed to take her accusation and examination, in writing, under oath, respecting the man so ac-

When a woman shall accuse a man as father of a bastard child, before a Justice of the Peace, what proceedings shall be had.

Accused to be held to give bond to appear and answer at next C. C. C. Pleas.

If woman be unable to attend Court, or not delivered cause may be continued and bond renewed or continued.

What proof necessary, and what admissible on trial.

Adjudication by the Court, on verdict or default, and order thereon.

Form of the issue to be tried.

cused, and the time and place where she was begotten with child, with such other circumstances as he shall judge necessary for the discovery of the truth of such accusation, and at his discretion may bind him that is so accused to the next Circuit Court of Common Pleas, with sufficient surety or sureties, to answer to such accusation, and abide the order of Court thereon. And if the woman be not then delivered, or be unable personally to attend the said Court, may order the continuance or renewal of his and her bond, that they may be forth coming at the next Circuit Court of Common Pleas after the birth of the child, and the continuance of such bonds aforesaid to the next Circuit Court of Common Pleas entered thereon by order of the said Court, (unless the surety or sureties shall object thereto) shall have the same force and effect as a recognisance taken in Court for the next term. And if she being put upon the discovery of the truth respecting the same accusation in the time of her travail, shall thereupon accuse the same person of being the father of the child, of which she is about to be delivered, and shall continue constant in such accusation, and shall prosecute him as the father of such child before the Circuit Court of Common Pleas in the manner herein prescribed, (in which prosecution she shall be admitted as a competent witness, and her credibility be left to the Jury) and such examination shall be given in evidence on the trial of the issue or if by default or by his plea he shall admit the truth of the allegations contained in said prosecution, he shall be adjudged the reputed father of such child, and stand charged with the maintenance thereof, with the assistance of the mother, as the Justices of the same Court shall order; and shall give security to perform the said order, and to save the town or place which might be otherwise chargeable with the maintenance of such child, free from charge for its maintenance, and may be committed to prison until he find sureties for the same, unless the pleas and proofs made and produced on the behalf of the man so accused, and other circumstances, be such as the Jury, by whom the issue, whether he is guilty or not guilty, shall be tried, shall find him not guilty; in which case the Justices of the said Court shall acquit him thereof; and the verdict of

the Jury of the same Court whether guilty or not guilty, shall be final respecting such issue: *Provided*, That no woman shall be admitted as a witness as aforesaid, who has been convicted of any crime, which would by law disqualify her from being a witness in any other cause: *And provided also*, That no woman after she has made an application as aforesaid to a Justice of the Peace for a prosecution against the putative father of a bastard child, and after such Justice has taken her accusation and examination on oath, shall be allowed to make any settlement with such father, or give any discharge, which shall be given in evidence on the trial of any such complaint to affect or bar the same, if it is objected to in writing by the overseers of the poor of any town, interested in the maintenance and support of such mother or bastard child.

Previous as to the testimony of the woman.

Her settlement with or discharge of the man accused, after complaint made, not to be good, or offered in evidence, if objected to by the overseers of the poor, &c.

SEC. 2. *Be it further enacted*, That any Justice of the Peace in any county, in this State, may issue his warrant, directed to the proper officer in his own county on any such complaint made on oath, and accompanied by the accusation and examination of such woman, directed to and made before any other Justice of the Peace; and such Justice, so issuing his warrant, may proceed to require of the man accused, when apprehended and brought before him, a bond with sufficient sureties as in this Act is provided, conditioned for his appearance at the Circuit Court of Common Pleas next to be holden in the county where the complaint was made.

Any Justice may issue a warrant to arrest the accused, on complaint on oath, accompanied by the accusation and examination taken before another Justice.

Same proceedings to be had.

[Approved February 14, 1821.]

CHAPTER LXXIII.

An Act to establish Courts of Sessions.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That there shall be a Court of Sessions in the several counties within this State, to consist of one Chief Justice and not exceeding four nor less than two Associate Justices, at the discretion of the Governor and Council, a majority of whom appointed for any county may constitute a quorum for doing business; to be

Courts established.

Jurisdiction.

appointed and commissioned by the Governor with advice and consent of Council, as soon as conveniently may be, who are hereby vested with all powers relative to the erection and repair of gaols, and other county buildings, the allowance and settlement of county accounts, the estimate, apportionment and issuing warrants, for assessing county taxes, granting licenses, laying out, altering and discontinuing highways, appointing Committees and ordering Juries for that purpose ; as well as all other duties appertaining to a Court of Sessions.

Terms of the Courts.

SEC. 2. *Be it further enacted,* That the Courts of Sessions shall be holden within and for the several counties in this State, at the times and places following, to wit :—Within and for the county of York, at York, on the Tuesday next preceding the third Monday of April, and at Alfred on the Tuesday next preceding the second Monday in September ; within and for the county of Oxford, at Paris, on the third Tuesday of June and first Tuesday of October ; within and for the county of Cumberland, at Portland, on the fourth Tuesday in March, and on the second Tuesday in September ; within and for the county of Kennebec, at Augusta, on the last Tuesday in April and on the first Tuesday in August ; within and for the county of Somerset, at Norridgewock, on the second Tuesday in March, and on the second Tuesday in September ; within and for the county of Lincoln, at Wiscasset, on the Thursday succeeding the fourth Monday in April ; at Warren, on the Thursday succeeding the second Monday in January ; at Topsham, on the Thursday, succeeding the fourth Monday in August ; within and for the county of Hancock, at Castine, on the Thursday next succeeding the third Tuesday of March, and on the Thursday next succeeding the third Tuesday of November ; within and for the county of Washington, at Machias, on the first Tuesday in March, and on the first Tuesday in September ; within and for the county of Penobscot, at Bangor, on the first Tuesday of March, and on the first Tuesday of September.

Matters now pending.

SEC. 3. *Be it further enacted,* That all matters, taken for, returnable to, or are now pending in the several Courts of Sessions, shall be returnable to, have day, be proceeded in,

and determined by the respective Courts of Sessions, within and for the same counties, at the term thereof next to be holden as by this Act provided. And the Clerks of the Circuit Court of Common Pleas, within the several counties shall be Clerks of the Court of Sessions. Clerks.

SEC. 4. *Be it further enacted*, That the Justices of the Court of Sessions, shall receive for their services three dollars for each day, during their attendance in said Court, and one dollar for every ten miles travel, to be paid out of the county Treasury. Pay of Justices.

SEC. 5. *Be it further enacted*, That whenever it shall happen, that there is not a majority of said Justices, assembled at the time for holding the said Court, any one or more of said Justices, shall have power to adjourn said Court, until a quorum shall be assembled. Less than a quorum may adjourn.

SEC. 6. *Be it further enacted*, That all Acts heretofore made respecting Courts of Sessions, and which are inconsistent with the provisions of this Act, be, and the same are hereby repealed. Repeal of former laws.

[Approved June 27, 1820.]

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CHAPTER LXXIV.

An Act to alter the time for holding the Court of Sessions for the county of Oxford.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That from and after the passing of this Act, the times for holding the several terms of the Court of Sessions within the county of Oxford, instead of the times now designated by law, shall be and hereby are established as follows, viz.—At Paris on the third Tuesday of June, and the second Tuesday of October, annually.

[Approved March 19, 1821.]

CHAPTER LXXV.

An Act determining the times and places for holding the Circuit Court of Common Pleas in the county of York.

Times and places.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That from and after the passing of this Act, the times for holding the Circuit Court of Common Pleas, within and for the County of York, shall be as follows, to wit:—At Alfred, on the second Monday of February; at York, on the last Monday of May; and at Alfred, on the fourth Monday of September, annually.

Saving clause as to processes depending, &c.

SEC. 2. *Be it further enacted*, That all writs, recognisances, warrants, complaints, appeals, and every other process, matter or thing, which, before the passing of this Act, might or ought to be returned to, or entered at the Court aforesaid, at any time heretofore appointed for holding the same, and which is altered by this Act; and all parties and persons who have been or may be required to appear and attend at the aforesaid times; and all actions, suits, matters and things, which may be pending in the said Court, at the times aforesaid, shall be returned to, entered at, appear, attend and have day, and be tried and determined in the said Court, at the times and places appointed by this Act; and all laws heretofore passed in any manner repugnant to, or inconsistent with, the provisions of this Act, are hereby repealed.

[Approved March 17, 1821.]

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CHAPTER LXXVI.

An Act describing the power of Justices of the Peace in Civil and Criminal Cases.

General jurisdiction of Justices of the Peace, and their duty in criminal cases, in arresting, trying, recognising and committing offenders.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That it shall be within the power, and be the duty of every Justice of the Peace within his county, to punish by fine not exceeding five dollars, all assaults and batteries that are not of a high and aggravated nature, and to examine into all homicides, murders, treasons, and felonies done and committed in his coun-

ty, and commit to prison all persons guilty, or suspected to be guilty of manslaughter, murder, treason or other capital offence; and to cause to be staid and arrested, all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this State, or such others as may utter any menaces or threatening speeches; and upon view of such Justice, confession of the delinquent, or other legal conviction of any such offence, shall require of the offender to find sureties to appear and answer for his offence, at the Supreme Judicial Court, or Circuit Court of Common Pleas, next to be held within or for the same county, at the discretion of the Justice, and as the nature or circumstances of the case may require; and for his keeping the peace, and being of good behaviour, until the sitting of the Court he is to appear before; and to hold to bail all persons guilty or suspected to be guilty of lesser offences which are not cognizable by a Justice of the Peace; and require sureties for the good behaviour of dangerous and disorderly persons; and commit all such persons as shall refuse so to recognise, and find such surety or sureties as aforesaid; and take cognizance of, or examine into all other crimes, matters and offences, which by particular laws are put within his jurisdiction.

SEC. 2. *Be it further enacted*, That all fines and forfeitures accruing for the breach of any bye-law, in any town within this State, may be prosecuted for, and recovered before any Justice of the Peace in the town or county where the offence shall be committed, by complaint or information, in the same way and manner other criminal offences are prosecuted before the Justices of the Peace within this State.

Breaches of the bye-laws of towns may be prosecuted before Justices of the Peace.

SEC. 3. *Be it further enacted*, That any person aggrieved at the sentence given against him, by any Justice of the Peace, may appeal therefrom to the next Circuit Court of Common Pleas to be held within the same county, and shall, before his appeal is granted, recognise to the State in such reasonable sum, not less than twenty dollars, as the Justice shall order, with sufficient surety or sureties for his prosecuting his appeal; and shall be held to produce the copy of

Persons aggrieved may appeal to the C. Court of Com. Pleas.

Must recognise with sureties,

and produce

Execution.

shall award to the party sued, his reasonable costs, taxed as the law directs. And upon all judgments given by a Justice of the Peace in civil actions, he shall award execution thereon in form by law prescribed.

Justice to have jurisdiction where the *ad damnum* does not exceed 20 dollars.

SEC. 9. *Be it further enacted*, That the amount of the sum or several sums, specified, expressed or supposed to be demanded by the plaintiff in his declaration, shall not be considered as any objection against the Justice's jurisdiction, provided the *ad damnum*, or damage is not laid or stated to exceed twenty dollars.

Party aggrieved may appeal to C. C. Com. Pleas.

SEC. 10. *Be it further enacted*, That any party aggrieved at the judgment of any Justice of the Peace, in a civil action, where both parties have appeared and plead, may appeal therefrom to the next Circuit Court of Common Pleas to be held within the same county; and shall before his appeal is allowed, recognise with a surety or sureties, in such reasonable sum as the Justice shall order, not exceeding thirty dollars, to pay all intervening damages and costs, and to prosecute his appeal with effect; and shall be held to produce a copy of the whole case, at the Court appealed to, and both parties shall be allowed to offer any evidence upon the trial at the Circuit Court of Common Pleas, in the same manner as if the cause had been originally commenced there. And no other appeal shall be had on such action after one trial at the Circuit Court of Common Pleas. And the Circuit Court of Common Pleas, when any person recognised as before mentioned to bring forward an action of trespass, doth neglect to do it, upon complaint thereof made in writing by the plaintiff, shall give judgment for such sum in damages, as the plaintiff hath declared for, together with all reasonable costs which accrued both in the same Court and before the Justice. And the Circuit Court of Common Pleas shall, when any appellant thereto shall fail to prosecute his appeal, or if he shall neglect to produce a copy of the case, affirm the former judgment upon the appellee's complaint, and award such additional damages as shall have arisen in consequence of the said appeal, and cost.

—Must recognise to prosecute,

and produce copies at C. C. C. Pleas.

Proceedings in that Court.

No further appeal.

Defendant in trespass failing to bring forward the action according to his recognisance.—Plaintiff to have his damages.

Appellant failing to prosecute, on complaint judgment may be affirmed.

In action of trespass when defendant pleads title to

SEC. 11. *Be it further enacted*, That when an action of trespass shall be brought before any Justice of the Peace, and the defendant shall plead the general issue, he shall not be

allowed to offer any evidence that may bring the title of real estate in question. And when the defendant in any such action shall plead the title of himself or any other person in justification, the Justice upon having such plea plead, shall order the defendant to recognise to the adverse party in a reasonable sum, with sufficient surety or sureties to enter the said action at the next Circuit Court of Common Pleas to be holden within the same county, and to prosecute the same in the same manner as upon an appeal from a Justice's judgment; and if such pleader shall refuse so to recognise, the Justice shall render judgment against him, in the same manner as if he had refused to make answer to the same suit. And either party in such cause, shall be allowed to appeal from the judgment of the Circuit Court of Common Pleas, in the same manner as if the suit had been originally commenced there.

*real estate—
mode of pro-
ceeding before
Justice.*

*Appeal allow-
ed in such
cases from C.
C. Pleas to
S. J. Court.*

SEC. 12. *Be it further enacted,* That in all civil actions triable before a Justice of the Peace, except such actions of trespass wherein the defendant means to avail himself, by pleading the title of himself or any other person under whom he claims in justification of the trespass or trespasses alleged to be committed on real estate; the defendant shall be entitled to all evidence, under the general issue, which by law he might avail himself of under any special plea in excuse or justification, any law, usage or custom to the contrary notwithstanding.

*General issue
may be plead
in all actions
before Justices
and special
matter given
in evidence
except where
title to real es-
tate is relied
on by defend-
ant.*

SEC. 13. *Be it further enacted,* That each Justice of the Peace may grant subpoenas for witnesses in all civil actions and causes pending before the Supreme Judicial Court, Circuit Court of Common Pleas, Court of Sessions, and before him or any other Justices, and in all civil actions and causes pending before arbitrators or referees. And every Justice of the Peace shall have power by public proclamation to adjourn the trial of any action brought before him, from time to time, when equity may require it; but he shall not be of counsel to either party, or undertake to advise or assist any party in suit before him.

*Justices may
grant subpoe-
nas in all civil
actions.*

*May adjourn
their Courts by
proclamation;*

*No Justice to
be of counsel
in any suit be-
fore himself.*

SEC. 14. *Be it further enacted,* That when an executor or administrator shall be guilty of committing waste, where-

*In case of
waste by exec-
utor or ad-*

administrator,
Justice may
proceed as C.
C. C. Pleas
may in such
cases.

by he is rendered unable to pay the judgment recovered before any Justice of the Peace, against the goods and estate of the deceased in his hands, out of the same, the Justice may proceed against the proper goods and estate of such executor or administrator, in the same manner as the Circuit Court of Common Pleas are empowered to do.

Justice to keep
record of his
proceedings.

When Justice
shall die before
a judgment
given by him
is satisfied,
what proceed-
ings to be had.

SEC. 15. *Be it further enacted*, That each Justice of the Peace shall keep a fair record of all his proceedings; and when any Justice of the Peace shall die before a judgment given by him is paid and satisfied, it shall be in the power of any Justice of the Peace in the same county to grant a scire facias upon the same judgment, to the party against whom such judgment was rendered up, for him to show cause if any he hath, why execution should not be issued against him. And although the costs and debt awarded by the deceased Justice when added together, shall amount to more than twenty dollars, it shall be no bar upon such scire facias, but judgment shall be given thereon for the whole debt and cost, together with the cost arising upon the scire facias. *Provided always*, That either party may appeal from the judgment as in other personal actions, where judgment is given by a Justice of the Peace. And every Justice of the Peace who shall have complaint made to him, that a judgment given by a Justice of the same county then deceased, remains unsatisfied, shall issue his summons to the person in whose possession the record of the same judgment is, directing him to bring and to produce to him the same record; and if such person shall contemptuously refuse to produce the same record, or shall refuse to be examined respecting the same, upon oath, the Justice may punish the contempt by imprisonment, until he shall produce the same, or until he submits to be examined as aforesaid; and when the Justice is possessed of such record, he shall transcribe the same upon his own book of records, before he shall issue his scire facias; and shall deliver the original back again to the person who shall have produced it, and a copy of such transcription, attested by the transcribing Justice, shall be allowed in evidence in all cases, where an authenticated copy of the original might be received.

Appeal allow-
ed to either
party.

Justice to
whom com-
plaint is made
in such cases,
may summon
the person
possessing the
record to pro-
duce it.

Punishment
for refusal so
to do.

Duty of the
Justice when
the record is
produced, to
transcribe it
into his own
records.
Copy of such
transcript to
be evidence.

SEC. 16. *Be it further enacted,* That all Justices of the Peace before whom actions may be commenced under former commissions, and such commissions shall expire before judgment shall be rendered thereon, or judgment being rendered, the same remains in whole or in part unsatisfied, such Justices of the Peace who shall hereafter have their said commissions seasonably renewed, and being duly qualified agreeably to the Constitution of this State, to act under such commissions, be and they hereby are authorized and empowered to render judgment, and issue execution on all such actions, commenced as aforesaid, in the same manner as if the commissions under which such actions may be commenced, were in full force.

Justices, whose commissions expire before judgment or satisfaction, may proceed, under a new commission, if seasonably obtained, to render judgment, &c.

[Approved March 15, 1821.]

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CHAPTER LXXVII.

An Act providing a speedy Method of recovering Debts, and for preventing unnecessary costs attending the same.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That every Justice of the Peace in this State shall have power within his county to take recognisances for the payment of debts of any person who shall come before him for that purpose: which recognisance may be in substance as follows:—

Justices may take recognisances for debts.

Know all men, that I, A. B. of —, in the county of —, do owe unto C. D. of —, the sum of —, to be paid to the said C. D. on the — day of —; and if I shall fail of the payment of the debt aforesaid, by the time aforesaid, I will and grant that the said debt shall be levied of my goods and chattels, lands and tenements, and in want thereof of my body. Dated at —, this — day of —, in the year of our Lord —. Witness, my hand and seal — A. B. — ss. Acknowledged the day and year last abovesaid. Before E. F. Justice of the Peace.

Form of recognisance.

SEC. 2. *Be it further enacted,* That every Justice of the Peace taking any such recognisance, shall immediately record the same at large in a book to be kept by him for that purpose; and after the same is recorded, may deliver it

To be recorded by the Justice.

Execution may
issue thereon
within 3 years.

to the Conusee; and upon the Conusee's lodging the same with the said Justice, at any time within three years from the time when the same is payable, and requesting a writ of execution, it shall be the duty of such Justice to issue a writ of execution thereon for such sum as shall appear to be due on the same; which writ of execution shall be in substance as follows:

State of Maine.

(SEAL.) To the Sheriff of the county of —, or his deputy, or either of the Constables of the town of —, in said county, Greeting.

Form of execution.

Because A. B. of —, in the county of —, on the — day of —, in the year our Lord — before E. F. Esq. one of the Justices of the Peace for the said county of —, acknowledged that he was indebted to C. D. of —, in the county of — in the sum of — which he ought to have paid on the — day of —, and — remains unpaid as it is said —: We command you therefore, that of the goods, chattels or real estate of the said A. B. within your precinct, you cause to be paid and satisfied unto the said C. D. at the value thereof in money, the sum last abovesaid, with —, for this writ; and thereof also to satisfy yourself your own lawful fees: and for want of goods, chattels or real estate of the said A. B. to be found within your precinct to the acceptance of the said C. D. to satisfy the sums aforesaid and your said fees; we command you to take the body of the said A. B. and him commit unto our gaol in our county of — aforesaid, there to be detained in the said gaol until he pay the full sums abovesaid, with your said fees; or that the said A. B. be discharged by the said C. D. the creditor, or otherwise by order of law: Hereof fail not and make due return of this writ with your doings therein unto the above named Justice within sixty days next coming. Witness, the said Justice at —, the — day of —, in the year of our Lord —. E. F. Justice of the Peace.

Power and duty of officer in serving it.

Which writ of execution the said Justice is authorized to direct to any proper officer or officers in any county in this State; who are hereby required to execute the same according to the precept thereof. And all such officers are here-

by declared liable for any malfeasance or misfeasance of which they may be guilty in relation to any such execution which may be delivered to them; which execution said Justice is authorized to renew at any time within one year from the time the last execution was returnable. Renewable in 1 year.

SEC. 3. *Be it further enacted,* That whenever three years shall have elapsed after the time of payment limited by any such recognisance without any execution having been issued on the same, or whenever the Justice who took the same shall have deceased or removed from the State or become otherwise disqualified, the Conusee may have his action of debt on the same, in the same manner as a creditor is entitled to have his action on any judgment of any Court of record in this State. Conusee may sue on recognisance in certain cases.

[Approved January 27, 1821.]

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CHAPTER LXXVIII.

An Act for rendering the decision of Civil Causes as speedy and as little expensive as possible.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That when any persons who may have a dispute, of what nature soever, shall agree to have the dispute determined by referees mutually chosen by the parties for the purpose, it shall and may be lawful for the person or persons making the demand in the action, to make out a particular statement thereof under his or their hands in writing, and to lodge the same with some one Justice of the Peace; and the said Justice of the Peace, upon application of the parties for the purpose, shall make out an agreement to be annexed to the aforesaid demand, and to be by them or their lawful agents or attornies, subscribed, and acknowledged in substance as follows:—Town of A—— in the county of S——, 182 . Know all men, that A. B. of —— in the county of —— [addition] and C. D. of —— in the county of —— [addition] have agreed to submit the demand made by the said A. B. against the said C. D. which is hereunto annexed, (and all other demands, as the cause may be,) to the determination of E. F. G. H. and I. K. the report Persons having matter in dispute may refer the same by rule before Justice of the Peace.
Demand in writing and signed.
Form of submission,

of whom, or the major part of whom, being made as soon as may be to any Circuit Court of Common Pleas, to be holden in and for the said county of S——, judgment thereon to be final. And if either of the parties shall neglect to appear before the referees, after proper notice being given them, of the time and place appointed by the referees, for hearing the parties in this action, the referees shall have power to proceed ex parte. A. B. C. D.—S——ss.—182 .

and acknowl-
edgment.

Then the above named A. B. and C. D. personally appeared, and acknowledged the above instrument by them subscribed to be their free act. Before me, L. M. Justice of the Peace.

Report to be
made to next
C. C. Com.
Pleas.

SEC. 2. *Be it further enacted*, That the determination of the referees who may be appointed agreeably to this Act, shall be made to the next Circuit Court of Common Pleas, to be holden in and for the county in which the Justice of the Peace may have lived at the time he issued the agreement as aforesaid; and the Circuit Court of Common Pleas to whom the report of the referees may be made as aforesaid, shall have cognizance thereof in the same way and manner, and the same doings shall be had thereon, as though the same had been made by referees appointed by a rule of the same Court.

Report may
by consent of
parties be
made known
to them before
Court;

SEC. 3. *Be it further enacted*, That where the parties shall agree that the determination of the referees may be made known, prior to its being made to the Circuit Court of Common Pleas as aforesaid, it shall and may be lawful for the referees to make known the determination to the parties, without its affecting in any degree the validity thereof; and if the determination shall be so made known to the parties, it shall and may be lawful for the party who may be found indebted agreeably to the determination aforesaid, to discharge him or themselves therefrom, and thereby prevent any further process thereon, by paying the same unto the person or persons to whom it may be so awarded.

and sum
awarded paid.

Power of re-
ferees.

SEC. 4. *Be it further enacted*, That the referees who may be appointed in pursuance of this Act, shall be vested with all the authority, which is possessed by referees appointed by a rule of Court. And witnesses shall be summoned to appear before them, and be sworn in the same

manner as witnesses before referees appointed by a rule of Court as aforesaid.

SEC. 5. *Be it further enacted*, That upon any report of referees returned into any Circuit Court of Common Pleas, in pursuance of this Act, and also upon any report made by referees appointed by a rule of any Circuit Court of Common Pleas, wherein it is agreed, at the time of entering into such rule, that the report of said referees shall be final, the judgment of said Circuit Court of Common Pleas, shall be final accordingly.

Judgment on reports of referees to be final.

[Approved January 27, 1821.]

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CHAPTER LXXIX.

An Act directing the proceedings against Forcible Entry and Detainer.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That two Justices of the Peace, quorum unus, shall have authority to inquire by a Jury, as hereinafter directed, as well against those who make unlawful and forcible entry into lands or tenements, and with a strong hand detain the same, as against those who, having a lawful and peaceable entry into lands or tenements, unlawfully and by force hold the same; and if it be found upon such inquiry, that an unlawful and forcible entry hath been made, and that the same lands or tenements are held and detained with force and strong hand, or that the same after a lawful entry are held unlawfully and with force and a strong hand, then that such Justices shall cause the party complaining to have restitution thereof.

Two Justices, quorum unus, may inquire and decide by Jury.

SEC. 2. *Be it further enacted*, That when complaint shall be formally made in writing to any two Justices of the Peace, quorum unus, of any unlawful and forcible entry into any lands or tenements and detainer as aforesaid, or of any unlawful and forcible detainer of the same after a peaceable entry, they shall make out their warrant under their hands and seal, directed to the Sheriff of the same county or his deputy, commanding him in behalf of the State, to cause to come before them, twelve good and lawful men of the same county, and they shall be empannelled to inquire into the

Mode of proceeding on complaint to Justices.

Jury to be empannelled.

Summons to issue to party complained against.

Mode of service, &c.

forcible entry or forcible detainer complained of, which warrant shall be in the form prescribed by law; and the said Justices shall make out their summons to the party complained against, in form prescribed by law. Which summons shall be served upon the party complained against, or a copy thereof left at his usual place of abode, seven days before the day appointed by the Justices for the trial; and if after the service of such summons, the party does not appear to defend, the Justices shall proceed to the inquiry in the same manner as if he was present; and when the Jury shall appear, and shall have elected a foreman as in other cases, the Justices shall lay before the Jury the exhibited complaint and shall administer the following oath to them, viz:

[Foreman's Oath.]

Foreman's oath.

You, as Foreman of this Jury do solemnly swear, that you will well and truly try, whether the complaint of A. B. now laid before you, is true according to your evidence. So help you GOD.

[The other Jurors' Oath.]

Other Jurors' oath.

The same oath which your Foreman hath taken on his part, you and every of you shall well and truly observe and keep. So help you GOD.

And if the Jury shall find the same true, then they shall return their verdict in form following:

Form of verdict.

At a Court of inquiry held before R. S. and N. O. Esquires, two of the Justices of the Peace, within and for the said county of S. quorum unus, at D. in the said county of S. upon the — day of — in the year of our Lord —, the Jury upon their oaths do find, that the lands or tenements in D. aforesaid, bounded (or described) as follows, as in the complaint upon — day of — in the year of our Lord — was in the lawful and rightful possession of the said A. B.; and that the said E. F. did upon the same day unlawfully with force and arms, and with a strong hand, enter forcibly upon the same (or being lawfully upon the same did unlawfully with force and a strong hand) expel and drive out the said A. B.; and that he doth still continue wrongfully to detain the possession from him the said A. B. Wherefore the Jury find upon their oaths aforesaid, that the said

A. B. ought to have restitution thereof without delay. And if by accident or challenge there shall happen not to be a full Jury the Sheriff shall fill the pannel de talibus circumstantibus, as in other cases. And if the Jury, after a full hearing of the cause, shall find the complaint laid before them supported by evidence, they shall all sign their verdict in form aforesaid ; otherwise the defendant shall be allowed his legal cost, and have his execution therefor.

SEC. 3. *Be it further enacted*, That if the Jury shall return their verdict, signed by the whole pannel, that the complaint is supported, the Justices shall enter up judgment for the complainant to have restitution of the premises, and shall award their writ of restitution accordingly ; and no appeal shall be allowed from the judgment of the Justices : *Provided nevertheless*, That the proceedings may be removed by certiorari into the Supreme Judicial Court, holden in such county, and be there quashed for irregularity, if any such there may be ; nor shall such judgment be a bar to any after action brought by either party. Which writ of restitution shall be in form prescribed by law.

Verdict to be signed by all the Jurors.

No appeal.

Proceedings may be removed by certiorari.

SEC. 4. *Be it further enacted*, That whenever any tenant whose estate in the premises is determined, shall unlawfully refuse to quit any house, land or tenement after thirty days notice given him in writing for that purpose by the lessor, his heirs or assigns, he shall be liable to the process provided by this Act ; and the form of the verdict of the Jury shall be the same, mutatis mutandis, as in case of forcible entry and detainer : *Provided nevertheless*, That this Act shall not extend unto any person, who hath had the occupation or been in the quiet possession of any lands or tenements by the space of three whole years together, next before, and whose estate therein is not ended or determined.

Tenants holding over, liable to this process.

[Approved February 5, 1821.]

CHAPTER LXXX.

An Act directing the mode of process, to be adopted in replevying of Cattle or Beasts distrained, and also of goods and Chattels.

Owner of cattle impounded may have writ of replevin.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any person shall have his cattle restrained or impounded, in order to obtain satisfaction for damages they may have committed, or to obtain a forfeiture, supposed to have been incurred for their going at large out of the inclosure of the owner, in violation of law, in order to have the legality of such distrainment or impounding determined, he may have and prosecute a writ of replevin for the liberation of the cattle thus impounded, in the form prescribed by law.

In certain cases judgment for defendants damages may be given, instead of return, if legally taken.

SEC. 2. *Be it further enacted,* That when it shall appear from the plea of the defendant in replevin, that the cattle were taken and impounded, damage feasant, or for the recovery of a penalty incurred for their being found going at large, out of the inclosure of the owner, in violation of law; and upon the issue it shall be determined that the cause of taking and detaining was lawful and justifiable, judgment shall, instead of a return of the cattle, be rendered for the defendant in replevin, to recover such reasonable damages, as upon a consideration of the circumstances of the case, the Justice (or a Jury in case it comes before one,) shall assess, together with his costs of taking and impounding, and costs of defence: but if upon the trial of the issue, it shall appear, that the cattle were taken or detained without sufficient and justifiable cause, the plaintiff in replevin shall recover such reasonable damages for the taking and detaining, as the Justice, (or Jury, in case it comes before one,) shall assess, together with his costs: but when, from the matter of the plea of the defendant in replevin, damages with propriety cannot be assessed, or that a restoration of the property replevied is the best recompense the parties can have, and upon the issue it shall be found, that the cattle were taken and detained lawfully, and for justifiable cause, the judgment shall be rendered, that the cattle be returned and restored to the defendant, irrepleviable, and for costs, and he be entitled to a writ of return and restitution accordingly.

If illegally taken, plaintiff shall have damages.

In certain cases defendant may have return instead of damages.

SEC. 3. *Be it further enacted,* That when it shall appear from the plea or avowry of the defendant in replevin, that the sum demanded in damage for the taking and detaining exceeds twenty dollars, or that the property of the beast taken, is the question between the parties (in case the value exceeds twenty dollars) or that the right to soil and freehold is coming in question in every such case, the Justice shall not proceed to try the issue, but shall order the defendant in replevin to recognise in a reasonable sum, with sufficient surety or sureties, to the adverse party, to enter the said action at the next Circuit Court of Common Pleas or the Supreme Judicial Court, to be held in the same county, as the plaintiff in replevin shall then and there elect and choose, and to prosecute the same to effect; and if such defendant in replevin shall neglect or refuse thus to recognise, the Justice shall render judgment against him in the same manner as if he refused to make answer to the same suit. And in case such defendant shall, after recognising fail of entering or prosecuting the same action, the plaintiff may enter and prosecute the action, or have his remedy on the recognisance, at his election.

When from plea it appears that the damages demanded exceed \$20,

what proceedings are to be had.

SEC. 4. *Be it further enacted,* That when any goods or chattels shall be taken, distrained, attached, or unlawfully detained, which shall be claimed by a third person, and the person thus claiming the same, shall think proper to replevy them, in case such goods and chattels are of the value of more than twenty dollars, he may take out and prosecute his writ of replevin from the Clerk's office of the Circuit Court of Common Pleas, in the county where the goods and chattels are thus taken, distrained or attached in form prescribed by law. And in case the plaintiff in replevin shall neglect to enter and prosecute the suit, the defendant may upon complaint have judgment for a return and restoration of the goods and chattels replevied, and the damages for the taking to the amount of six per cent. on the bond, with reasonable costs, and a writ of return and restitution thereupon accordingly. And if upon a trial of the issue, judgment shall be rendered for a return and restitution, the interest of six per cent. upon the penal sum of the bond, shall be taken as a rule for estimating the plaintiff's damages, in case they

When goods are taken, distrained attached or detained and claimed by third person, form of proceeding.

Mode of assessing damages in different cases.

Attachment on
mesne process
continued in
certain cases.

Damages re-
covered by of-
ficer to be to
use of creditor.

Court may is-
sue writ of
withernam, in
case.

Court may va-
ry form of
writs in cer-
tain cases.

were taken on execution. And if the taking shall have been upon execution, the goods and chattels returned shall be held responsible for the space of twenty days after the return; and if on mesne process, until thirty days shall have expired, after final judgment thereon, in case judgment shall not have been given; but if final judgment on the mesne process shall have been given before the return, then for the space of twenty days only after the return, to the end, the creditor, at whose suit they were originally taken, may have a complete remedy, and the benefit of his attachment. And the monies recovered by way of damages, by any officer who has taken or attached any goods or chattels, at the suit of a creditor shall be considered and taken as recovered to the use of the creditor;—and when received, be paid over to him accordingly.

SEC. 5. *Be it further enacted*, That when the Sheriff or other officer, unto whom the writ of return and restitution shall be directed, shall not be able to find the beast or other property in his precinct, which shall, by the same precept, be directed to be returned and restored irrepleviable, and the same shall appear in writing by the return of the officer thereon, the Court from whence the same issued, may, upon motion, grant a withernam against the plaintiff in replevin, to compel a complete and specific performance of the judgment, which writ of withernam shall be in form prescribed by law.

SEC. 6. *Be it further enacted*, That when the writ of return and restoration or writ, in withernam, shall issue from any other Court of law, or for any other property than beasts, the Court from whence the same shall issue, shall so vary the form as to them shall appear expedient to carry the same into full force and effect, as the nature and circumstances of the case shall require.

[Approved January 27, 1821.]

CHAPTER LXXXI.

An Act prescribing the mode of recovering Forfeitures of Personal Property liable thereto by law.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That whenever any personal property shall be liable to forfeiture for any offence, any person or persons entitled thereto, or interested therein in whole or in part, may seize and shall safely keep the same till a final decree be had thereon, unless the owner or person from whom it was taken, claiming the same for himself, or some other person, shall give bond, with sufficient surety to the party seizing, to pay the appraised value thereof, when and if it shall be finally decreed forfeited; which value shall be appraised upon oath by three judicious and disinterested men, mutually chosen by the parties, or (in case of disagreement or refusal of the party seizing) appointed by a Justice of the Peace in the county where the property was seized; but upon the giving or tendering such bonds, the property shall be delivered to such owner or claimant, and if no claimant shall appear, the party seizing shall be held to cause an inventory and appraisement of the property seized, to be made by three disinterested persons under oath, who shall be appointed by a Justice of the Peace in the county where the property shall be seized; which appraised value shall be the rule by which to determine where the libel shall be commenced.

When personal property is seized as forfeited,

it may be restored to the owner, he giving bonds, &c. for appraised value,

to be ascertained by men on oath, chosen by the parties, or appointed by a Justice.

And if no person appear to claim the property, it must be also appraised on oath.

SEC. 2. *Be it further enacted*, That if the property seized exceed twenty dollars in value, the party seizing the same shall within twenty days after the seizure, but not afterwards, file a libel in the Clerk's office of the Circuit Court of Common Pleas in the county where the offence was committed, stating the cause of seizure, and praying for a decree of forfeiture; whereupon the Clerk shall make out a notification to all persons to appear at such Court, and show cause, if any they have, why such property should not be decreed forfeit for such cause of seizure; which notifications the libellant shall cause to be inserted in some newspaper printed in the same county, if there be one, otherwise in some newspaper printed in the next or nearest county, or in

If property seized exceed the value of \$20, the party seizing to libel it within 20 days in C. C. Com. Pleas.

Court to give notice.

Manner.

If property is claimed, Court may try the cause by Jury,

and for good cause decree forfeiture.

If Jury find the seizure groundless, damages may be decreed to claimant.

Either party may appeal.

In case property seized be under \$20, the proceedings must be had before a Justice of Peace.

Appeal allowed to C. C. C. Pleas.

Depositions may be used as in other cases.

Judgments for costs &c. on complaint for affirmation.

Portland, fourteen days at least before the sitting of the Court at which the libel is to be tried; and upon entry of such libel, at the time when civil actions are to be entered in such Court, the Court shall have power to hear and determine the cause by a Jury, where there is a claimant, but without one, if, upon proclamation made, no claimant appears, and to decree the forfeiture and disposition of such property according to law, and may decree a sale and distribution of the proceeds, deducting charges where they think proper, and may also award costs against the claimants: and if such libel be not supported, or be discontinued, restitution of the property shall be decreed to the claimants, with costs. And if the Jury on the trial, where the libel is tried by a Jury, find the seizure groundless and without probable cause, they shall assess, and the Court shall decree reasonable damages for the claimant with costs. And either party aggrieved at the decree of such Court, may appeal therefrom to the Supreme Judicial Court next to be holden in the same county; who shall have power, upon such appeal, finally to hear and determine the cause, and decree thereupon in manner aforesaid.

SEC. 3. *Be it further enacted,* That when the property seized shall not exceed the value of twenty dollars, the libel shall be preferred to some Justice of the Peace in the same county where the offence was committed, within the time aforesaid; who shall have power to hear, determine and decree thereupon as aforesaid, having first caused a like notification to be posted up, and which the libellant shall be held to do at some public place in the same county, seven days before the time of trial; saving to either party aggrieved liberty to appeal from the decree of such Justice to the next Circuit Court of Common Pleas to be held in and for said county; who shall have power finally to hear, determine and decree in the cause aforesaid; and depositions taken for legal cause, and according to law, may be used on the trial, as well before said Justice as before said Courts. And if any such appeal is not entered and prosecuted, the Court to which the same was made, upon complaint, may affirm the decree appealed from, with additional damages and costs, or with additional costs only, as the case may require.

[Approved March 5, 1821.]

CHAPTER LXXXII.

An Act providing for the payment of Costs in Criminal Prosecutions.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That in all cases wherein any costs in any criminal prosecution, commenced either before the Supreme Judicial Court or Circuit Court of Common Pleas in any county in this State, the Court before whom such prosecution so commenced (having cognizance of the offence) shall have power to allow and tax such costs for Justices, officers and their assistants, Jurors and witnesses, and for Court and other charges, upon such prosecution, and previous to its determination, not exceeding the fees that are or may be stated by law ; whether the person accused be brought to trial or not, or whether he be convicted or acquitted upon trial: and all such costs so taxed, shall be paid out of the county treasury: *Provided*, That no Justice of the Peace shall hereafter have power to issue summonses for witnesses to appear at any Court, or before any Justice of the Peace, except on complaint brought before himself, to give evidence in behalf of the State upon any criminal suit, unless it be by the request of the Attorney General or County Attorney, which request shall be expressed in the summons: and when any Justice of the Peace shall issue any summons, at the request of the party prosecuted, it shall be so expressed in the summons, and the witness shall therein be required to appear and give evidence upon condition such person prosecuted pays him his legal fees, but not otherwise.

Courts authorized to allow and tax costs in cases before them, for Jurors, witnesses, officers, Justices, &c.

To be paid out of the county treasury.

Justices of the Peace not to summon witnesses for State, in criminal cases, unless, &c.

SEC. 2. *Be it further enacted*, That the Clerk of each of said Courts shall attest and deliver to the county Treasurer copies of all bills of costs allowed by the said Courts, and certificates of all fines and forfeitures imposed and accruing to the State, or to the county, either before the rising thereof or as soon after as may be: and shall also deliver to him a separate certificate of all the bills of costs allowed by said Courts setting down therein the sum total only of each, for the purpose hereafter mentioned; and the Clerks of said Courts shall also be held to return into the

Clerks to deliver to county Treasurer attested copies of bills of costs allowed, and certificates of fines, &c.

And also to return to the State treasury

certificate of treasury of the State a certificate of all fines and forfeitures
 fines imposed to use of State. imposed to the use of the State by their respective Courts.

Sheriffs, Coroners and Constables to pay fines penalties, costs, &c. by them collected, to the county Treasurer.

Penalty for neglect.

How recovered and appropriated.

Penalty for Sheriffs, &c. permitting a person sentenced to pay a fine, &c. to go at large before payment of such fine or costs.

How recovered and appropriated.

Sheriff and other officers to produce to the Courts, &c. County Treasurer's receipts for such sums, &c.

Justices of Peace to pay

SEC. 3. *Be it further enacted,* That all Sheriffs, Coroners and Constables who may hereafter receive any fines, forfeitures or bills of cost, in pursuance of the judgment or sentence of either of said Courts, as well where such fines or forfeitures accrue to the State, as where they accrue to the county, except debts and costs received upon executions in favour of the State, shall forthwith pay the same to the Treasurer of the county in which they shall be received: and if any Sheriff or other officer, receiving such fine or forfeiture, or bills of costs, shall neglect to pay the same for the space of ten days after receipt thereof, he shall forfeit and pay double the amount of such fine or forfeiture, and bill of costs to such county Treasurer; who is hereby empowered and directed to sue for the same forthwith, to be recovered with costs, by action of debt in the Circuit Court of Common Pleas, in the same county, one third of said penalty to the use of such county Treasurer, the other two thirds to the use of the State. And if any Sheriff or other officer, shall permit any person who may be sentenced to pay any fine, forfeiture, or bill of cost, and committed to the custody of such Sheriff or other officer or gaoler, till such sentence be performed, to go at large without payment, unless by order of law, and shall not pay such fine, forfeitures and costs, to the county Treasurer, within twenty days next after such escape, he shall be held to pay double the sum of such fine, forfeitures and costs; and the Treasurer of the county shall have power to sue for and recover the same, in the same manner and to the same use as is herein before provided. And every Sheriff and other officer aforementioned, shall be held to produce to said Courts respectively, at every session thereof in their county, receipts in full from the county Treasurer, for all fines, forfeitures and costs imposed by said Courts respectively, received and paid, previous to the sitting of such Courts, or to assign the cause why they have not received, or not paid the same, in order that such Court, may order a prosecution against such as shall appear to be delinquent.

SEC. 4. *Be it further enacted,* That every Justice of the Peace, be, and he hereby is directed to pay all fines and for-

feitures by him received upon convictions and sentences before himself, as well those which accrue to the State as those which accrue to the county, to the Treasurer of the county whereof he is Justice of the Peace; and that he render his account and pay such fines on or before the first day of October next, and afterwards once in every six months. And if any Justice of the Peace shall neglect to account for, and pay in such fines and forfeitures to the Treasurer of the county, whereof he is Justice as aforesaid, he shall forfeit and pay for every such neglect the sum of thirty dollars to such county Treasurer, to be by him recovered as aforesaid with costs, one half of such forfeiture to his own use, and the other half to the use of the State. And it shall be the duty of every county Treasurer, from time to time, to call upon the Justices of the Peace within his county, and require them to account to him for and pay in such fines and forfeitures, and to prosecute such as shall be delinquent.

finer and forfeitures received by him to the county treasurer and account semi-annually.

Penalty for neglect how recovered and applied.

Duty of county treasurer to require Justices so to account, and prosecute for neglect.

SEC. 5. *Be it further enacted,* That every county Treasurer, shall, within two months after the rising of the Supreme Judicial Court, make out and transmit to the Treasurer of the State an account upon oath, therein charging the State with all bills of costs allowed and taxed by said Court, and by the Circuit Court of Common Pleas in and for each county respectively, for which the Clerk's certificates above mentioned shall be sufficient vouchers; and a commission of five per cent. on all monies received and paid, and giving credit for all fines, forfeitures and costs accruing to the State and by him received as aforesaid, and pay the balance of such account, if in favour of the State, to the Treasurer thereof; but if such balance be in favour of the county Treasurer, it shall be paid him or his order, out of any unappropriated monies in the Treasury, as soon as may be by the Treasurer of the State, said account having been first laid by him before the Governor and Council for their examination and allowance, and their warrant thereupon by him obtained for payment of the same. And any county Treasurer who shall neglect to make out and transmit his account as aforesaid, and to pay the balance if any be due, to the State, as aforesaid, within the time aforesaid, shall forfeit and pay the sum of one hundred dollars to the use of the State, to be recovered

County treasurer to transmit to State treasurer an account, on oath, of bills of costs in Courts.

Mode of adjusting and payment of balance of such accounts.

Penalty for neglect of this duty by county Treasurer.

Mode of recovering penalty.

Attorney General required to prosecute such delinquents.

with costs, by action of debt, in the Circuit Court of Common Pleas, in the county whereof he is Treasurer: and the Attorney General, upon notice of such neglect, from the Treasurer of the State, which he is hereby required forthwith to give, shall be, and hereby is authorized and required to prosecute such action without delay, to final judgment and execution. And the said county Treasurer shall be also held notwithstanding the recovery of the penalty aforesaid, to account for and pay the balance of all such fines, forfeitures and costs, accruing to the State, into the Treasury thereof.

County treasurer to render a general account annually to Governor and Council, of fines, bills of costs, &c.

Substance and form of such account.

SEC. 6. *Be it further enacted*, That it shall be the duty of every county Treasurer, in addition to the accounts required by the fifth section of this Act to be exhibited, to make out and exhibit on the third Wednesday of January annually, to the Governor and Council a general account of their proceedings, therein crediting the State for all monies by them respectively received, by warrants on the Treasury, or for fines, forfeitures and bills of cost, and from whom: and in the same account charging the State for all payments by them actually made before that time, and the balance due, if any, to credit to the State in a new account; and every county Treasurer shall at the same time, make out and transmit as aforesaid, an account of all sums due, and to whom, on any bills of cost allowed and taxed by the Supreme Judicial Court and Circuit Court of Common Pleas, and also an account of all fines and forfeitures, and bills of cost within their counties respectively, which belong to the State, and which may be then remaining unpaid, and from whom the same shall be due; and shall be further held to make out and exhibit such other statements, accounts and returns, as the Governor and Council shall judge to be necessary or expedient, for a just and accurate settlement of said Treasury transactions with the State under this Act, and as the said Governor and Council shall from time to time require.

Sums allowed by Courts to individuals, on criminal prosecutions, not to be paid, un-

SEC. 7. *Be it further enacted*, That all sums taxed or allowed, or which may hereafter be taxed or allowed, and all other charges which have arisen or may arise, in any criminal prosecution before the Supreme Judicial Court, or any

Circuit Court of Common Pleas, and which by law are chargeable to the State, shall be claimed and demanded by the person or persons who are or may be entitled to receive the same of the county Treasurer, within three years next after the same were or may be taxed or allowed, and not afterwards. And all persons not claiming or demanding such allowances, within the time above limited, shall be forever afterwards debarred therefrom. And it shall be the duty of every county Treasurer in his general account, required to be exhibited to the Governor and Council on the third Wednesday of January, to credit the State with all such sums allowed by either of said Courts remaining in the county treasury not claimed or demanded within the time abovementioned; and also for all sums taxed in any bill of cost on a criminal prosecution, for the fees of the Attorney General when no other person is entitled thereto, and the amount of such sums shall be deducted from the county Treasurer's account against the State; and every county Treasurer shall account with his county, for all sums received out of the treasury of the State, for Jury fees, and for gaoler's charges for the maintenance of prisoners.

less demanded within three years.

Sums not demanded within that time, to be credited to the State by the county treasurer.

Sums taxed for fees of Attorney General, in cases, &c. to be credited State.

SEC. 8. *Be it further enacted*, That the charges of supporting prisoners, committed by due process of law, unable to support themselves, who now are, or hereafter may be confined in any gaol, upon charge or conviction of crimes and offences committed against the said State, shall be, and hereby are made the proper charge thereof: *Provided however*, That in no case shall there be allowed by the State, more than at the rate of one dollar a week for any such prisoner, or more than the actual charges incurred for his support, being less than that sum: and the said charges shall be examined, allowed and paid as follows, to wit: The gaol keeper of each gaol in the State, shall render on oath, to the Court of Sessions of the county at each term thereof, an account of the charges incurred for the support of prisoners in the respective gaols, committed as aforesaid, stating therein the time when each prisoner was committed, for what offence, how long held, and when discharged (if discharged) and shall exhibit the warrants of commitment and discharge, and leave copies thereof with the said Court; and in the

How prisoners are to be supported, who are not able to support themselves—and mode of proceeding in such cases.

same account, the said gaol keeper shall credit all monies and effects whatever, received or to be received of the prisoner, or of any persons on his account, and the said Court shall examine the said account, and inquire what part thereof the prisoner may be able to pay; and for such part as he shall be found unable to pay, the said Court shall make a reasonable allowance to the said gaol keeper, to be paid out of the county treasury.

Compensation allowed by State to county treasurer.

SEC. 9. *Be it further enacted*, That every county Treasurer shall charge to the State, not exceeding the rate aforesaid, the several sums he shall so pay out of the county treasury, with two and a half per cent. for his services, and shall include the same in the accounts which he is required to render to the Treasurer of the State in and by this Act. And said payments shall make part of the debit of said accounts against the State, to be settled, allowed and discharged, as in this Act is provided.

[Approved March 19, 1821.]

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CHAPTER LXXXIII.

An Act authorizing Courts to liberate or dispose of poor Convicts in service.

Persons imprisoned for three months for costs, after conviction before Sup. Jud. Court, C. O. Com. Pleas, or Justice of the Peace, may be disposed of in service;

and if such disposal cannot be made, convict may be liberated on such conditions as the Courts may direct.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That where any person shall have been convicted of any crime, either before a Justice of the Peace, or any Circuit Court of Common Pleas, or in the Supreme Judicial Court, and imprisoned three months for costs of prosecution only, the Circuit Court of Common Pleas, for the county where the person has been imprisoned, may order the Sheriff to dispose of such convict in service to any person whomsoever, for a term not exceeding two years, for the payment of the costs for which he has been imprisoned as aforesaid; and if such disposal cannot be made, the same Court may order the Sheriff to liberate such convict, on such terms, or on such conditions as they may think most beneficial to the State and county. And either of said Courts holden for the same county, may, at any term hereafter, on motion as aforesaid, order the Sheriff of their respective counties to liberate any convict in

such county in manner as aforesaid, after his having been imprisoned three months for costs as aforesaid. And when the costs aforesaid are not obtained by means of the liberation, they shall be paid as is provided by law for the payment of costs where there is no conviction. And the several Sheriffs are hereby required duly to execute the aforesaid orders, and to make return of their doings therein to the respective Courts.

Costs how paid when not obtained of convict.

SEC. 2. *Be it further enacted*, That the Justices of the Supreme Judicial Court, and the Justices of the several Circuit Courts of Common Pleas, within this State, be, and they hereby are authorized, at any term of their respective Courts, on motion made for that purpose, to order the Sheriff of said county, to liberate from prison any poor convict who shall have been committed to prison by the order of any Justice of the Peace, or of the said Circuit Court of Common Pleas, or of the Supreme Judicial Court within said county, when it shall be made to appear to said Circuit Court of Common Pleas, or the Supreme Judicial Court, that said convict has lain in prison for the term of three months, for fine and costs only, and that he stands committed for no other cause, and that he has not estate sufficient to pay said fine and costs: upon condition, however, that the Court shall order said convict to give his own note for the amount of said fine and cost, payable to the Treasurer of said county, to the use of said county. And upon condition that before the Justices of the Supreme Judicial Court and Circuit Courts of Common Pleas shall liberate such poor convict, they shall require of said convict a schedule in writing signed by him or her, stating the particulars of the property by him or her owned, together with an oath in writing by him or her signed, that the schedule contains a true account of all property of which he or she is the owner in possession, reversion or remainder, to his or her knowledge and belief. And that he or she has not sufficient wherewith to support him or herself in prison or to pay prison charges. And has not directly or indirectly sold, conveyed or intrusted to any person since the sentence passed by which said convict was committed to prison, any goods, effects or credits, nor any real estate, with intent to

When prisoner has been confined 3 months for fine and costs, and is unable to pay, S. J. Court or C. C. Com. Pleas may order him liberated on giving note to county treasurer for amount of costs.

In such case prisoner must give, under oath, a schedule of his property, &c.

Penalty for
giving false
schedule.

evade the performance of the sentence against him or her. And if any such convict shall knowingly and wilfully make any false schedule or oath in relation to the matters aforesaid, or any of them, and be thereof convicted in the Supreme Judicial Court, he or she shall receive no benefit from the said liberation, but shall be liable to be again imprisoned till he or she performs the original sentence.

[Approved March 17, 1821.]

CHAPTER LXXXIV.

An Act regulating the Selection, Empannelling and Service of Jurors.

Selectmen to
keep a Jury
box.

Once in 3
years prepare
a list.

Persons ex-
empted from
serving as Ju-
rors.

Box to be kept
by town clerk.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Selectmen, in each town in this State, on or before the second Monday of September next, shall provide and at all times cause to be kept in their respective towns, one Jury box; and shall, once at least in every three years afterwards prepare a list of such persons, under the age of seventy years, in their respective towns, as they shall judge best qualified to serve as Jurors, being persons of good moral character, and qualified as the Constitution directs, to vote in the choice of Representatives, excepting the Governor, Counsellors, Judges and Clerks of the Common Law Courts, Secretary and Treasurer of the State, Loan officers and Revenue officers, Judges and Registers of Probate, Registers of Deeds, settled Ministers of the Gospel, officers of any College, Preceptors of Incorporated Academies, Physicians and Surgeons regularly authorized, Cashiers of incorporated Banks, Sheriffs and their Deputies, Marshals and their Deputies, Counsellors and Attornies at Law, Justices of the Court of Sessions, Criers of the Judicial Courts, Constables and constant Ferymen; and having written their names upon tickets, they shall cause them to be placed in the Jury box, and shall then lay the whole of their doings before the town for a revision, who may confirm the same, or make such alterations therein as they may deem proper: and the said box shall be held and kept by the Town Clerk; and the persons whose names shall be continued in said box, shall be liable to be drawn,

and serve on any Jury, at any Court for which they may be drawn, once in every three years, and not oftener.

SEC. 2. *Be it further enacted*, That it shall be the duty of the several towns, to provide and have constantly kept in said box, ready to be drawn when required, a number of Jurors, not less than one, and not more than two, for every hundred persons, which said town may contain, computing by the last census which may have been taken, next before the preparing the box.

Number liable to be drawn in each town.

SEC. 3. *Be it further enacted*, That if any person whose name shall be in the box aforesaid, shall be convicted of any scandalous crime, or be guilty of any gross immorality, his name shall be withdrawn from the box by the Selectmen.

Persons convicted, &c. their names to be taken from the box.

SEC. 4. *Be it further enacted*, That the Courts of Sessions in the several counties in this State, within one year next after every new census, and as much oftener as any considerable change in the state of population shall render useful and necessary, divide their respective counties into at least four Jury districts, and more if it shall be found in practice convenient, not exceeding twelve, each to contain so many adjoining towns as shall make the number of inhabitants in each division as nearly equal, according to the last census for the time being, as may be, without dividing a town; and such Jury districts shall be numbered and distinguished numerically; and the said Courts of Sessions shall cause copies of such divisions to be delivered to the Clerks of the respective Courts at which the course of trials is or may be by Juries, who shall issue their *venire facias*, in due form, directed to the respective Constables of as many towns in one such Jury district, and for as many Jurors as shall be, as near as may be in proportion to the number of Jurors sent for in the other districts, to serve at the same Court, always collecting the grand and traverse Jurors so far as shall be practical and convenient as uniformly from all parts of the county, as the situation of towns, the number of their inhabitants, and a practical rotation and equalization of the service of Jurors will permit; never taking more than two grand and two traverse Jurors from the same town, to serve at the same Court, unless from necessity, some extraordinary

Court of Sessions to divide counties into Jury districts.

Rule to be observed by Clerks in sending *venires*.

occasion, or to equalize their services on the principles aforesaid.

Grand Jurors
at C. C. Com-
mon Pleas to
serve the year.

Sheriff to dis-
tribute the ve-
nires.

Constables'
duty, &c.

Mode of draw-
ing Jurors.

SEC. 5. *Be it further enacted,* That the Grand Jurors who shall be returned to serve at the Circuit Court of Common Pleas, shall serve at every term of said Court, which shall be held throughout the year. And venires for such a Jury, shall be issued forty days at least, before the second Monday of September annually. And the Sheriff of each county, so soon as he shall receive the venires for Jurors, from the Clerk of either Court, shall without any delay, forward the same to the Constables of the towns to whom they shall be directed; and the Constables of their respective towns, on the reception thereof, shall, in the usual form, notify the freeholders and other inhabitants, in their towns, qualified to vote in the election of Representatives, and particularly the Selectmen and Town Clerk, to assemble and be present at the drafts and selection of the Jurors called for; which meeting shall be held at least, six days, and not more than twenty days, before the sitting of the Court to which the venire shall be returnable.

SEC. 6. *Be it further enacted,* That when any town shall be duly assembled, in pursuance of a venire facias, for the purpose aforesaid, the Town Clerk, or in his absence, one of the Selectmen, shall carry into the meeting the box containing the names of those persons who have been selected to serve as Jurymen, at the Court from which the venire issued; which box shall be unlocked in the meeting, and the tickets mixed by the major part of the Selectmen, who are to be present; and one of the Selectmen shall draw out as many tickets as there shall be Jurors required by venire. The persons whose names shall be thus drawn, shall be returned to serve as Jurors, unless from sickness, absence beyond sea, without the limits, or in different parts of the State, they shall be considered by the town as unable to attend the Court for which they had been drafted; or had served on a Jury within three years from that day. In either of these cases, or in case of a Coroner's being drawn at a time when the duties of a Sheriff shall be devolved on him by reason of a vacancy in that office, the persons' names being returned into the box, others shall be drawn in their stead;

but any person being thus excused, or who shall be returned, and shall not appear at Court, or appearing, shall be there excused, shall not be considered as serving, or be excused on another draft, should it happen within the term of three years, the minute on his ticket notwithstanding.

Sac. 7. *Be it further enacted,* That the Selectmen who shall draw from the box the ticket of any person to serve as a Juror, and who shall not be excused by the town, for either of the causes aforesaid, shall endorse thereon the date of the draft, and then return the same into the box; and it shall be the duty of the Constable to notify the persons thus designated to serve as Jurors, four days at least, before the sitting of the Court, on which they are to attend, either by reading to them the venire, with the minutes of their having been drafted as aforesaid, thereon; or by leaving at their usual abode, a written notification of their having been so drawn, and also of the time and place of the sitting of the Court, and when they are to attend. And he shall make a reasonable return of the venire to the Court to which it is returnable, with his doings thereon. And whenever there shall be a renewal, or an exchange of any of the tickets in the box, for others, of the same persons, the Selectmen shall transfer from the back of the old tickets to the new ones, the minutes of such drafts as has been made within the three preceding years.

Constables to notify Jurors who have been drawn.

Sac. 8. *Be it further enacted,* That when by a deficiency of either of the grand, or traverse Jurors of any Court, it cannot conveniently proceed in its business, it may cause writs of venire facias for the drawing and returning so many Jurors as shall be deemed necessary, to be forthwith issued, and directed to the Constables of such towns in the county as the Court, under the existing circumstances, shall judge most proper; conforming as far as the business of the Court will permit, to the principles by which, under this Act, Jurors are to be selected, and their services equalized: and the Jurors so drawn, shall be notified by the Constables to attend on the Court immediately. And when from challenges or otherwise, there shall not be a Jury to determine any civil or criminal cause, which may be called on for trial, the Sheriff or his deputy, or in case of an interest or

In case of deficiency of grand or traverse Jurors Court may issue venires returnable forthwith.

Sheriff or Coroner may return Jurors *de talibus circumstantibus*.

Proviso.

relationship in him, to a party in the suit, a Coroner, or such other disinterested person as the Court shall appoint, shall, by order of the Court, return Jurymen *de talibus circumstantibus*, sufficient to complete the panel: *Provided*, No person shall be considered as competent to be returned, whose name shall not, to the satisfaction of the Court, appear to be contained in the box aforesaid, unless the parties consent, and also provided that there shall be seven at least on the panel, of the Jurors returned by the venire.

Jurors may be examined on oath as to their interest, &c.

Sec. 9. *Be it further enacted*, That the Justices of the respective Courts aforesaid, shall on motion from either party, in a suit, put any Juror upon oath, whether he is any way related to either party, or hath formed or given any opinion, or is sensible of any particular interest or prejudice in the cause; and if thereupon, it shall appear to the Court, that such Juror does not stand indifferent in the cause, another Juror shall be called or returned, and be placed for the trial of that cause in his stead.

Clerk of court to prepare alphabetical list of Jurors.

Sec. 10. *Be it further enacted*, That from the return on the venires, the Clerk of each Court shall prepare, or have prepared, at the opening of every Court, separate alphabetical lists of the names of the persons who shall be returned as grand or traverse Jurors, respectively. And each Court, in empannelling the Grand Jury, shall cause the two persons who shall stand first on the Grand Jury lists to be called and sworn, and after them the others, in succession, as they shall be named in said list, and in such divisions as has been usual, or as by the Court may be deemed proper.

Mode of empannelling Grand Jury.

Mode of empannelling traverse Jury.

Sec. 11. *Be it further enacted*, That the respective Courts in empannelling the traverse Jurors, shall cause the names of the two first persons which shall stand on the list of Jurors of trials respectively, to be called, who shall be first sworn, and then the others in succession, as they shall be named in said list, and in such divisions as has been usual, or as the Court may deem proper. And the first twelve persons, thus empannelled, shall be the Jury; and when there shall have been venires, and returns for two Juries, shall be called the first Jury; and the next on said list being called and sworn as aforesaid, to the number of twelve shall form the second Jury: *Provided*, And in case of the

Court's excusing for cause, any person of either of said Juries, and there being any supernumeraries, the vacancy shall be supplied, and the pannels be filled and completed, on the above mentioned principles, in the same manner as if the person excused, had not been named in the Jury list; and provided also, in case of supernumeraries, on request, the Court may excuse individuals of either panel, who may not have sufficient reasons to exempt them from serving, so far as their places can be supplied by the supernumeraries, and by their consent.

Sec. 12. *Be it further enacted,* That the oaths which shall be administered to the grand and traverse Jury, respectively, when they shall be empannelled, shall be in the forms following, namely: [Grand Jurors' oath.]

You as Grand Jurors of this inquest for the body of this county of S. solemnly swear that you will diligently inquire, and true presentment make of all such matters and things, as shall be given you in charge; the State's counsel, your fellows', and your own, you shall keep secret; you shall present no man for envy, hatred or malice; neither shall you leave any man unpresented, for love, fear, favour, affection, or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding. So help you God.

Grand Jurors' oath.

[The other Grand Jurors' oath.]

The same oath which your fellows have taken, on their part, you and each of you, on your behalf, shall well and truly observe and keep. So help you God.

[The form of the traverse Jurors' oath in civil causes.]

You, and each of you swear, that in all causes betwixt party and party that shall be committed to you, you will give a true verdict therein, according to the law and the evidence given you. So help you God.

Traverse Jurors' oath.

[Form of the oath in criminal causes, not capital.]

You swear, that you will well and truly try the issue between the State and the defendant or defendants, (as the case may be) according to your evidence. So help you God.

Oath in criminal causes.

[Form of the oath in capital causes.]

You swear, that you will well and truly try, and true deliverance make, between the State, and the prisoner at the

Oath in capital causes.

bar, whom you shall have in charge, according to your evidence. So help you God.

Affirmation in cases of scrupulosity.

Provided, That any person conscientiously scrupulous of taking an oath, shall instead thereof be allowed to make affirmation, substituting the word, "affirm," instead of the word "swear," and also the words, "this you do under the pains and penalties of perjury," instead of the words, "So help you God."

Grand Jury to elect foreman by ballot.

Sec. 13. Be it further enacted, That it shall be the duty of the Grand Jury, who shall be thus sworn, empannelled and instructed by the charge from the Court, so soon as they shall retire for the purpose of discharging the duties of their office, first to elect by ballot their foreman, and to notify the Court, by the officer who shall be appointed to attend on them, of the person who shall have been thus elected, and who shall be thereupon foreman of the Jury for the then existing term, and as such be recorded by the clerk accordingly. But in case of the absence of such foreman, by sickness, or any other cause, it shall become necessary during the same session of the Jury, to appoint another foreman, they shall proceed in a similar manner to elect, and to announce to the Court the choice of another foreman in his stead. And the foreman of each Grand Jury, in the presence of the Attorney General or County Attorney, shall have power to swear any witness to testify before such Grand Jury, and it shall be his duty to return to the Court which empannelled them, a list of all witnesses so sworn, before said Grand Jury be discharged from their attendance upon the said Court; which list shall be filed and entered of record by the Clerk thereof. And the traverse Jurors being thus empannelled, shall respectively, either retire and choose by ballot their respective foreman, or shall make such a choice on their retiring with the first cause with which they shall be charged, as may best accommodate the arrangements and business of the Court, of which choice, the Court shall be notified on the Jury's return.

Foreman may, in presence of Attorney for State swear witnesses.

Traverse Jurors to choose foreman by ballot.

Provisional Jurors may be required to be drawn.

Sec. 14. Be it further enacted, That if at any time, from the existing state of the country, the nature or quantum of the business pending, or from any other cause, the Courts respectively, shall be of opinion that it will be a hardship

on one set of traverse Jurors to serve the whole of the term, and that it would best meet the interest of the public and of individuals, to have a second set of Jurors to serve a part of the term, it shall be in the discretion of the Court to direct their Clerk, when they shall issue their venires to the Constables, in manner before directed, for the usual number of Jurors, to require in the same venire, that a second draft of an additional number, equal to the first number, shall be made, which shall be called provisional Jurors, and shall form the second set, so far as they shall be needed, and especially sent for by the Court. And the Constables shall also notify these Jurors four days before the sitting of the Court, of their being drawn as provisional Jurymen, in the same manner as is provided for the notification of the first set of Jurors. And such provisional Jurors shall hold themselves in readiness, and if called for by the Court, shall attend and serve, at any time in the course of that term. And in all cases, when provisional Jurors shall be drawn as aforesaid, it shall be in the discretion of the Court, at any time during the session, to excuse, on request, from further attendance, any individual of the first set of Jurors, on the condition of his giving seasonable and personal notice to such a provisional Juror or Jurors, for his or their immediate attendance, as shall be designated and called for, by the discretion of the Court.

Such Jurors to be notified and ready when called for.

Court may excuse Jurors of first set.

SEC. 15. *Be it further enacted,* That it shall be the business of the Grand Juries to present all crimes, offences, and breaches of the law, cognizable by the respective Courts at which they shall attend; and of the traverse Juries, respectively, to try, according to the established forms and principles of law, all causes which shall be committed to them, and to decide at their discretion by a general verdict, both the fact and the law, involved in the issue; or to find a special verdict, or a general verdict, subject to the opinion of the Court, on a case or point stated and reserved by agreement of the parties, or their counsel, under the direction of the Court, as making a part of the record, to be entered as such; and in case such Jurors, after a due and thorough deliberation on any civil cause, with which they may be charged, shall return into Court without having been able

Powers and duties of grand and traverse Jurors.

to agree on a verdict, it shall be in the discretion of the Court explaining to them its understanding of questions of law, if any should be proposed, and re-stating what any witness had testified, should that be requested by the Jury, to send them out again for further deliberation; and if the Jury should return a second time without being able to agree on a verdict, they shall not be liable to be sent out a third time, unless they shall state some legal difficulties for explanation, which had not been previously attended to by the Court. And if any person obtaining a verdict in his favour in any Court in this State, shall, during the session of the said Court, in which such verdict shall be obtained, give to any of the Jurors in said cause, knowing him or them to be such, any victuals, drink or entertainment, or other article by way of treat or gratuity, whether before or after such verdict, on due proof thereof, it shall be a sufficient reason, at the discretion of the Court, to set aside the verdict, at the election of the adverse party, and award a new trial of the cause.

Party prevailing not to treat the Jury.

In real actions a view may be had.

Proviso as to costs.

SEC. 16. *Be it further enacted*, That in all cases relating to real estates, either party may have a Jury to view the place in question, if the Court shall be of opinion, that such view is necessary to a just decision: *Provided*, The party moving therefor shall advance such a reasonable sum to the Jury, as the Court shall order to be taxed against the adverse party in the event of a decision of the cause against him, on its merits, or through the default of the adverse party.

Venires for Jurors may be returnable on any day the Court may direct.

SEC. 17. *Be it further enacted*, That the Justices of either of the Courts aforesaid shall have power to order the writ of venire facias, which may be issued either for the grand or traverse Jurors, to be returned on such day of the term, as they may judge will best serve the purposes of justice, and facilitate the business of said Court.

Town meetings for Jurors, how to be notified.

SEC. 18. *Be it further enacted*, That the manner in which Constables, upon the receipt of venires for Jurors, shall notify the qualified inhabitants of their respective towns to assemble, and to be present at their drafts as aforesaid, shall, unless otherwise ordered by said towns respectively, be the same as has been or shall be established therein for notify-

ing and warning their annual town meetings. But if any town shall, at a legal town meeting, have ordered that the notifications shall be by the Constables, giving notice to the Selectmen or the major part of them, and the town Clerk, or by any other mode, such notification shall be sufficient.

SEC. 19. *Be it further enacted*, That the grand and tra-verse Jurors who shall attend at the Supreme Judicial Court, and Circuit Court of Common Pleas, shall each be allowed one dollar and twenty-five cents a day for their attendance, and six cents a mile for their travel out and home; to be paid out of the county treasuries respectively. Compensation of Jurors.

SEC. 20. *Be it further enacted*, That the Selectmen, Town, Constable, Clerk of the town, Clerk of the Court, Sheriff or Juror, who having no justifiable cause therefor, shall neglect to discharge the duties incumbent on them, him or it, respectively, by this Act, shall be subjected to the respective fines and amercements named to be assessed, ordered and imposed by the Court, in reference to whose Jurors such neglect or failures may have taken place; namely, a fine not exceeding twenty dollars, at the discretion of the Court, on any Selectmen or town Clerk, who shall so neglect to perform his or their duty herein prescribed, as by means whereof the Jurors called for from his or their town shall not be returned; a fine not exceeding twenty dollars, at the discretion of the Court, on any Constable, who shall so neglect to perform the duties devolved on him by this Act, by means whereof there shall be a failure of the Jurors called from his town as aforesaid; a fine or amercement not exceeding one hundred dollars, at the discretion of the Court, on any town which shall so neglect the duties herein enjoined on it, as thereby to occasion a failure of the Jurors called for from such a town; a fine at the discretion of the Court, not exceeding fifty dollars, on their Clerk, or the Sheriff, who shall so neglect the duties enjoined on them, respectively, by this Act, as to prevent a compliance with any of its provisions; a fine on any Juror drawn, notified and returned, in the manner as above described, who shall unnecessarily fail in his attendance, and not being an inhabitant of Portland, not exceeding twenty dollars, and if an inhabitant of that town, not exceeding forty dollars, to be divided Penalty on any officers for neglect of duty, and appropriation.

Limitation of
actions for
penalty.

equally among the Jurors who shall attend and serve ; and a fine not exceeding eighty dollars, on any town Clerk or Selectman, who shall be guilty of any fraud, either in practising on the Jury box previously to a draft, or in the drawing a Juror, or in returning the name of any Juror into the box, which had been fairly drawn out, and drawing or substituting some other one in his stead, or in any other way whatsoever; and all such fines which the Selectmen, Constable, town Clerk, Sheriff or Clerk of a Court, shall incur by virtue of this Act, for any neglect, shall be to the use of the county in which the offender dwelt at the time of the neglect, to be recovered by indictment, information, or an action brought by the Treasurer of the county, before any Court having jurisdiction of the offence : *Provided*, The action shall be brought within twelve months after the offence shall have been committed ; such fines or amercements as shall be ordered or imposed on towns for any neglect of their duties as before specified, shall be to the use of the county in which the offending town may be ; and all fines and forfeitures for any of the frauds, by Town Clerks or Selectmen as above mentioned, shall be recovered by action of debt, in any Court having jurisdiction thereof ; one moiety thereof to be and enure to the State, the other moiety to him or them who shall prosecute and recover the same.

[Approved February 14, 1821.]

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CHAPTER LXXXV.

An Act prescribing the mode of taking Depositions.

In what cases
and circum-
stances depo-
sitions may be
taken.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any civil cause shall be pending in any Court, or before any Justice of the Peace in this State, and the writ, original summons, or complaint therein shall have been served on the defendant, or be pending before Referees or Arbitrators, and either party in the cause shall think it necessary to have the testimony therein of any person who shall live more than thirty miles from the place of trial by a Court, Jury, Referees or Arbitrators, or shall be bound on a voyage to sea before, or

be about to go out of the State, and not to return in time for the trial; or shall be so sick, infirm or aged, as not to be able to travel and attend at the trial; then the deposition of such person may be taken before any Justice of the Peace not being of counsel or attorney to either party, or interested in the event of the cause: *Provided*, Notice be given, and proceedings be had as hereinafter directed.

SEC. 2. *Be it further enacted*, That when either party in the cause shall apply to a Justice of the Peace to take such deposition, he shall give notice to the adverse party, if in this State, in substance as follows, to wit:

On application to a Justice, notice to be given to adverse party if in this State.

(L. S.) — ss. To — of —, in the county of —
[addition.] Greeting.

Whereas A. B. of — in the county of — [addition] has requested me to take the deposition of — of — in the county of —, [addition] to be used in an action of — pending between you and the said A. B. and the house of — in —, and the — day of — in the year of our Lord — at — of the clock in the —noon are appointed the time and place for the said deponent to testify what he knows relating to the said action: You are hereby notified that you may then and there be present, and put such interrogatories as you may think fit.—Given under my hand and seal at —, on the — day of — in the year of our Lord —. — Justice of the Peace.

Form of notice.

Provided nevertheless, That the notification to the adverse party may be issued by the Justice before whom the deposition is to be taken, or by any other Justice of the Peace within the State, *mutatis mutandis*, at the election of the party, at whose request such deposition is to be taken; and *Provided further*, That notice may be given verbally, by the Justice taking said deposition, or notice may be dispensed with, if the adverse party or his attorney shall, in writing, wave the same. And when the adverse party is not present at the taking of such deposition, the Justice taking the same shall certify that he was duly notified. And the service of this notification on the said adverse party, or his attorney, by leaving an attested copy thereof at his last and usual place of abode, allowing time for his attendance after being notified, not less than at the rate of one day, Lord's

Notice may be issued by the Justice taking the deposition, or any other Justice.

Justice may give verbal notice, or it may be waved in writing. Justice must certify notice.

Manner of giving notice.

Who to be
considered as
an attorney to
be notified.

Where there
are several
plaintiffs or
defendants no-
tice to one
good.

Deponent to
be cautioned
and sworn be-
fore being ex-
amined.

Deposition to
be written by
Justice, depo-
nent or a dis-
interested per-
son.

Justice to hand
it into Court,
&c.
or make a for-
mal caption,
and seal it up.

days exclusive, for every twenty miles travel; and such service being proved by the affidavit of a disinterested witness, or by the return on said notification of the Sheriff or his deputy of the county, or of the Constable of the town where the said adverse party or his attorney shall live, shall be deemed sufficient notice. But no person for the purposes of this Act, shall be considered as the attorney of another, until such attorney shall have endorsed the writ; or endorsed his name on the summons to be left with the defendant in the cause; or until he shall have appeared for his principal in the cause, before the Justice of the Peace, Referees or Arbitrators, or in the Court where the said action shall be pending, or shall have given notice in writing, stating he is attorney in the cause, to the other party or his attorney. And where there are several plaintiffs or defendants in any action, such notice to one of them, or the notice aforesaid to be given by the said Justice, given to one of them, shall be deemed sufficient.

SEC. 3. *Be it further enacted,* That every person depositing as aforesaid, shall first be cautioned and sworn or affirmed to testify the truth, the whole truth and nothing but the truth, and being afterwards carefully examined shall subscribe the testimony by him or her given, after the same shall be reduced to writing, which shall be done only by the Justice taking the deposition, or by the deponent, or some disinterested person in the presence of the said Justice; and the deposition so taken shall be retained by such Justice until he deliver the same, together with a certificate of the reasons for taking such deposition, and of notice, if any, with his own hand to the Court, Justice, Referees or Arbitrators, for which it may have been taken, or shall, together with such certificate as aforesaid, be sealed up by him, and directed to such Court, Justice, Referees or Arbitrators, and remain under his seal until opened in Court, or by such Justice, Referees or Arbitrators: which certificate shall be in substance as follows, to wit:

—— ss. —— On the —— day of ——, in the year of our Lord ——, the aforesaid deponent was examined and cautioned, and sworn (or affirmed) agreeably to law, to the deposition aforesaid by him subscribed, taken at the request of ——, and to be used in an action of —— now

pending between him and — before [here name the Court, Justice, Referees or Arbitrators]; and the adverse party was, or was not present (as the case may be) the said deponent living more than thirty miles from the place of trial, or being about to go out of the State and not to return in time for the trial, or being bound on a voyage to sea, or being so sick, or being so infirm, or being so aged as to be unable to travel and attend at the trial, is the cause of taking this deposition. — Justice of the Peace.

SEC. 4. *Be it further enacted*, That such Justice when requested by the party applying as aforesaid, shall issue his summons to the deponent in substance as follows, to wit:

Form of summons to deponent.

(L.S.) — ss. To — of — in the county of — [addition] Greeting.

Whereas A. B. of — in the county of — [addition] has requested me to take your deposition, to be used in an action now pending between him and —, and the house of — in — and the — day of — in the year of our Lord — at — of the clock in the — noon, are appointed the time and place for taking the same deposition: You are hereby required in the name of the State of Maine, then and there to appear to testify what you know relating to the said action. Hereof fail not. Given under my hand and seal at — the — day of — in the year of our Lord —. — Justice of the Peace.

Which summons when served, and the service thereof proved as before prescribed, in the case of the said notification, shall be deemed good and sufficient; and if any deponent so summoned shall neglect to appear at the time and place appointed in the summons, and having tendered to him or her thirty four cents for his or her time, and four cents a mile for his or her travel, computing from the deponent's said place of abode to the place of caption, and back, such deponent shall be subject to like actions forfeitures and attachment as are provided by law where witnesses are summoned to Court and do not appear.

Manner of serving such summons, to be effectual.

Penalty for non-attendance of such witness.

SEC. 5. *Be it further enacted*, That if on the trial of any cause, either party shall make it appear probable to the Court, that it will not be in his power to produce the witnesses, there testifying on the appeal or review of the cause, and shall move that their testimony be taken down in writing,

In certain cases testimony may be taken in open Court, to be used on appeal, &c.

it shall be done by the Clerk of the said Court, or by such Justice of the Peace as the Court shall appoint ; and if any appeal or review be had, such testimony may be used, if it shall appear to the satisfaction of the Court that the witnesses are then living more than thirty miles from the place of trial, or dead, or gone out of the State, or on a voyage to sea, or so sick, infirm or aged as then to be unable to travel and attend at the trial and not otherwise. And in every case (as oral testimony examined and cross-examined in open Court is to be preferred to depositions, when it can be reasonably had) where the deposition of a witness shall have been taken, it shall not be used in the cause at the trial, by the Court, Justice, Referees or Arbitrators, if the adverse party shall then make it appear that the reasons for taking the said deposition no longer exist ; but that the witness is within the said distance, and able personally to appear.

But not to be used if the witnesses can be produced.

Depositions taken out of the State may be admitted or rejected at the discretion of the Court.

Provided adverse party be notified, if within 20 miles.

Judicial courts may grant dedimus for taking depositions, on such terms as they may deem proper.

Depositions in perpetuam, how taken and certified.

SEC. 6. *Be it further enacted*, That all depositions taken out of this State before any Justice of the Peace, Public Notary or other person legally empowered to take depositions in the State or County where such depositions shall be taken and certified, may be admitted as evidence in any civil action, or rejected at the discretion of the Court: *Provided nevertheless*, That if the adverse party or his attorney shall live within twenty miles of the place of caption, no deposition shall be admitted, unless it shall appear by the caption or affidavit, that such adverse party or his attorney was notified of the time and place of caption.

SEC. 7. *Be it further enacted*, That the Justices of the Supreme Judicial Court and of the Circuit Court of Common Pleas, may grant a dedimus potestatem to have depositions taken, either within or without the State, in any action, suit or controversy pending in said Courts respectively, on such terms and conditions as they from time to time shall prescribe.

SEC. 8. *Be it further enacted*, That where any deposition shall be taken in perpetual remembrance of a thing, it shall be done by two Justices of the Peace, quorum unus, and they shall cause such as they know to be interested, to be duly notified of the time and place of the caption, if within twenty miles thereof, or in this State ; and if without that

distance, their attorney, if any they have; and the deposition being reduced to writing by one of the Justices or by the deponent in their presence and subscribed, the said Justices shall administer the oath and certify the caption and the names of all persons, whom they notified of the taking thereof, in substance as follows, to wit:

State of Maine.

_____ ss. Town of _____ this _____ day of _____ in the year of our Lord _____ personally appeared before us, the subscribers, two Justices of the Peace in and for the county of _____ quorum unus, the aforesaid deponent, and after being carefully examined, and duly cautioned to testify the whole truth and nothing but the truth, made oath, or affirmed, that the foregoing deposition by him subscribed is true. Taken at the request of _____ to be preserved in perpetual remembrance of the thing. And we duly notified A. B., C. D., E. F., being all the persons living within twenty miles of this place of caption, or in this State, we knew to be interested in the property to which the said deposition relates; and _____ attended [if any person so notified did attend] or _____ we not knowing any persons, living within twenty miles of said place of caption, or within the State, interested in the property whereto the aforesaid deposition relates, did not notify any persons to attend.

Form of the caption.

And the same deposition and caption shall within ninety days be recorded in the office of the Register of Deeds in the county where the land lies, if the deposition respected real estates; and if the same respected personal estates, then in the said office of the county where the person lives for whose use such deposition was taken; and such certificate shall be certified on the deposition, and the same deposition so certified, or a copy of the said record, may in the case of the death of such deponent, absence out of the State, or inability to attend the Court as aforesaid, be used as evidence in any cause to which it may relate.

Deposition to be recorded within 90 days in county where land lies,

or where person lives for whom taken if it relates only to personal estates.

Certified copy of such deposition to be legal proof, if deponent cannot attend.

SEC. 9. *Be it further enacted,* That every person who shall be conscientiously scrupulous of taking an oath and who on any lawful occasion shall be required to take an oath as a witness in any cause, shall instead of the usual form be permitted to affirm in these words, to wit: "I, A.B. do affirm un-

Persons scrupulous of taking an oath may affirm.

Form of affirmation.

Wilful and false affirmation punished as perjury.

der the pains and penalties of perjury," which affirmation shall be deemed of the same force and effect, as his or her oath would have been on the same occasion, taken in the usual form. And if any person making such affirmation shall be convicted wilfully, falsely and corruptly to have testified in any matter or thing, he or she so offending shall incur the same penalties and forfeitures as by the laws of this State are enacted against persons convicted of wilful and corrupt perjury.

Same penalties for false swearing in giving depositions as for false swearing in open Court.

SEC. 10. *Be it further enacted*, That if any person shall wilfully, falsely and corruptly swear or affirm, in giving or making any deposition or affidavit in this Act provided to be taken, he or she shall incur the same penalties, as if the testimony had been taken in open Court, and wilful perjury committed in giving the same.

[Approved March 15, 1821.]

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CHAPTER LXXXVI.

An Act for the relief of Persons who are scrupulous of taking Oaths.

Certain persons, scrupulous of taking an oath, may take and subscribe an affirmation.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That whenever any person shall be required to take or subscribe any oath, before he enters on the discharge of any office, place or business, or on any other lawful occasion, and such person shall be conscientiously scrupulous of taking or subscribing an oath, he or she shall be permitted to make or subscribe affirmation, instead of the oath which is or may be by law prescribed, changing such part of any such oath as ought to be changed, conformably to the Constitution of this State.

False and corrupt affirmation, to be punished as perjury.

SEC. 2. *Be it further enacted*, That if any person shall wilfully, falsely and corruptly, make or subscribe any such affirmation as aforesaid, he or she shall be liable to the same pains and penalties as are or may be by law provided against persons who wilfully, falsely and corruptly take or subscribe the oath for which such affirmation is substituted.

[Approved February 19, 1821.]

CHAPTER LXXXVII.

An Act for admitting Inhabitants of Towns and certain other Corporations as Witnesses.

BE it enacted by the Senate and House of Representatives in Legislature assembled, That in all suits at law whether of a civil or criminal nature, now depending, or that hereafter may be depending in any Court, or before any Justice of the Peace, within this State, wherein any county, town, public corporation, charitable, religious or literary incorporated society, is or may be a party, or interested in the event of the suit, any inhabitant of such county or town or member of such other incorporated society, shall and may be admitted as a competent witness; and his deposition may be used, if duly taken, and for legal cause, in the trial of the cause as well for as against such county, town or other corporation: *Provided*, He hath no other interest therein, than as an inhabitant or member of such county, town or other corporation, and is not otherwise legally disqualified; any law, usage or custom to the contrary notwithstanding.

Inhabitants of counties, towns, public corporations, &c. may be admitted as witnesses, in actions where the counties, towns or corporations of which they are inhabitants or members are parties or interested.

Provided they have no other interest nor otherwise disqualified.

[Approved February 28, 1821.]

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CHAPTER LXXXVIII.

An Act regulating Damages on Inland Bills of Exchange.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That when any Bill of Exchange, drawn or endorsed within this State, payable at any place without the State, and within the United States, and the territories thereof, which upon being duly presented for acceptance or payment, shall not be accepted, or paid, according to the order of said bill, or the terms of said acceptances (if any) and shall thereupon be regularly protested, every person drawing or endorsing such bill within the State, who shall be liable by law for the contents of said bill, to any holder or party thereto, shall, in addition to the contents of said bill, and to the cost and lawful interest, be

In actions on protested Bills of Exchange payable out of this State.

Rule of estimating damages.

liable for, and pay damages, at the following rates, viz. Upon all such bills payable within the States of New-Hampshire, Vermont, Massachusetts, Rhode-Island, Connecticut or New-York, three per cent. on the amount of such bill; if payable within the States of New-Jersey, Pennsylvania, Delaware, Maryland, Virginia or District of Columbia, five per cent.; if payable within the States of North Carolina, South Carolina or Georgia, six per cent.; if payable within any other of the United States, or the territories thereof, nine per cent.

On protested bills for \$100 or more, payable in the State at distance of 75 miles from place where drawn.

Rule for estimating damages.

SEC. 2. *Be it further enacted*, That when any Bill of Exchange, or order for the payment of money drawn or endorsed within this State, for one hundred dollars, or upwards, and payable at any place within the same, distant seventy five miles or more, from the place where the same is drawn or endorsed as aforesaid, which shall not be duly accepted and paid according to the order of said bill, or if accepted, which shall not be paid according to the terms of the acceptance, the person drawing or endorsing the same, within this State at the distance of seventy five miles or more from the place of payment, and who is liable by law, for the contents of said bill or order, to the holder thereof or any party thereto, shall, in addition to the contents of said bill or order, and lawful interest and cost thereon, be also liable for, and shall pay damages at the rate of one per centum on the amount thereof.

[Approved February 28, 1821.]

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CHAPTER LXXXIX.

An Act regulating the admission of Attornies and authorizing particular persons, in certain cases, to prosecute and defend suits at law.

Qualification for admission to practice as Attorney in Courts of this State.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That no person shall be admitted and allowed to be an Attorney of any Court in this State, unless he is a person of good moral character, and is well affected towards the Government and Constitution of this State, nor until he shall have faithfully devoted seven years at least to the acquisition of scientific and legal attain-

ments, whereof three years shall have been spent in professional studies, with some Counsellor at law, and two of the three with such Counsellor in this State; and no person shall be admitted to practise as an Attorney in any Court of Justice within this State, until he shall in open Court have taken and subscribed the oath or affirmation prescribed in the Constitution of this State, and an oath, in tenor following:

Attornies to be sworn in open Court.

You solemnly swear, that you will do no falsehood, nor consent to the doing of any in Court;—and if you know of an intention to commit any, you will give knowledge thereof to the Justices of the Court, or some of them, that it may be prevented; you will not wittingly or willingly promote or sue any false, groundless, or unlawful suit, nor give aid or consent to the same; you will delay no man for lucre or malice; but you will conduct yourself in the office of an Attorney within the Courts, according to the best of your knowledge and discretion, and with all good fidelity, as well to the Courts as your clients. So help you GOD.

Form of oath.

Provided always, That if any person shall hereafter commence practice as an Attorney or Counsellor at law, in any place or in any Court in this State, without such previous term and course of studies, or taking such oath as aforesaid, or without paying into the county treasury the excise duty required by law, he shall not be entitled to demand or receive any remuneration for professional services.

Without having complied with such requisitions not entitled to pay for services.

SEC. 2. *Be it further enacted*, That the plaintiff or plaintiffs in any suit, shall not be allowed to manage their cause by more than two Attornies, nor shall any defendant be allowed to employ a greater number.

Two attornies only, allowed on each side.

SEC. 3. *Be it further enacted*, That every citizen be, and hereby is, authorized to appear in any Court, and before any tribunal, Judge, Justice of the Peace or Magistrate, to prosecute and defend his suit or action by himself and by any person of a decent and good moral character, whom he shall call to his aid or appoint for that purpose; and that any person of such decent and good moral character, who shall produce in Court a power or letter of Attorney, specially for that purpose, from any person whomsoever, shall have full authority; though his principal be absent, to prosecute

Any person of good moral character may appear by special power.

and defend any suit or matter, wherein his principal shall be concerned, to final judgment and execution; and to plead, implead, or manage the same case as fully as if such person, so authorized, was an Attorney of such Court, and admitted and sworn in usual form as prescribed by law, and agreeably to the rules of such Court.

No person shall be counsel in a cause in which he has acted as Judge, &c.

No Justice shall sit in a cause commenced by him, &c.

No Sheriff or deputy shall act as attorney in a cause or draw writs, pleas, &c.

SEC. 4. *Be it further enacted*, That no person shall engage or be employed as Counsel or Attorney, before any Court within this State, in any action which he shall have determined as Judge or Justice of the Peace; and if any person as aforesaid, shall appear as Counsel or Attorney in any action or suit, he shall not be permitted to prosecute, defend, answer to, or manage, such action or suit. And no Justice of the Peace within this State, shall hear or determine any civil action which shall have been commenced by himself or by his order or direction, and every civil action commenced as aforesaid shall abate.

SEC. 5. *And be it further enacted*, That no Sheriff or deputy Sheriff shall be suffered to appear in any Court, or before any Justice of the Peace, as Attorney to, or in behalf of, or assisting, or advising to any party in a suit; nor shall any Sheriff or his deputy be allowed to draw, make or fill up any plaint, declaration, writ or process, or to draw or make any plea for any other person; but all such acts done by either of them shall be void.

[Approved February 10, 1821.]

CHAPTER XC.

An Act providing for the appointment of Clerks of the Courts in the several Counties, and requiring them to render an account of all monies received.

Clerk to be appointed by Governor and Council.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled*, That there shall be nominated and appointed by the Governor with the advice of the Council during pleasure, one person in each county in this State, who shall be Clerk of all the Judicial Courts, holden in the same county, and shall have the care and custody of all the records, files and proceedings which have heretofore been had and now remain in the respective offices of

either of the Clerks of the Supreme Judicial Court or Circuit Court of Common Pleas; and who shall be Clerk of all the Judicial Courts holden in the same county, under the authority of this State, and who shall do and perform all the duties, services, acts, matters and things, which he as Clerk of either of said Courts ought by law to do and perform.

To be Clerk of all the Courts.

SEC. 2. *Be it further enacted,* That the several Clerks to be appointed by virtue of this Act, shall keep a true and exact account of all the monies they shall receive, by virtue of their office, and shall on the first Wednesday of January annually render to the Treasurers of their respective counties under oath, a true account of the whole sum thus by them received, and after deducting one thousand dollars, (if they shall have received so much,) which shall be held and retained for their own use, they shall pay over the one half of all the residue to their respective county Treasurers for the use of the county.

To keep an account of fees.

Emoluments.

SEC. 3. *Be it further enacted,* That every such Clerk before he shall enter upon the duties of his office, shall be sworn or affirmed to do and perform all the duties appertaining to his office; and such Clerk shall also give bond to the State to the acceptance of the Governor and Council in a penal sum not less than eight thousand dollars, with two or more sureties, conditioned that he will well and faithfully do and perform all the duties, and pay over all the monies he is required by this Act to do and perform, and for the safe keeping and immediate delivery of all the records, files, papers, and muniments in said office to his successor on his leaving said office, which bond shall be lodged in the office of the Treasurer of this State.

Clerks to give bonds.

Condition.

SEC. 4. *Be it further enacted,* That each of the Clerks aforesaid shall be required to pay over to the Treasurer of the county, for which he may be appointed, all monies received by him, which has heretofore been ordered to be paid into the county treasury for the use of the county or State within thirty days from the adjournment of the Courts, at which he may have received the same.

To account to the county treasurer in 30 days.

SEC. 5. *Be it further enacted,* That the Clerks now in office, shall continue to do and perform all the duties of their

Clerks now in

office to continue.

Court to appoint a Clerk in certain cases.

respective offices until the first day of August next, and until others are appointed and qualified according to the provisions of this Act. And in case of a vacancy in said office, or the absence of any Clerk, the Judges of the several Courts, are hereby authorized and empowered to appoint a Clerk who is hereby authorized to do and perform all the duties of Clerk, during such vacancy or absence; and it shall be the duty of the several Clerks now in office to deliver over to their successors all the records, files and papers in their respective offices immediately upon the appointment of such successor.

SEC. 6. *Be it further enacted*, That this Act shall take effect, and have force from and after the first day of August next, and all Acts and parts of Acts inconsistent with the provisions contained in this Act are hereby repealed.

[Approved June 27, 1820.]

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CHAPTER XCI.

An Act providing that Bonds shall be given by Sheriffs and Coroners to the Treasurer of this State, and giving remedies thereon.

Sheriffs to give bond.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That every person appointed to the office of Sheriff within this State, shall, within sixty days from the receipt by him of his commission; and every Sheriff now in office unless another shall sooner be appointed in his place, shall within sixty days next after the passing of this Act, make and execute a bond, with at least three sufficient sureties residing within this State, in a sum not less than twenty-five thousand dollars for such person who now is or shall be appointed Sheriff in either of the counties of York, Cumberland, Lincoln and Kennebec; and in a sum not less than fifteen thousand dollars, for such person who now is or shall be appointed Sheriff of either of the other counties in this State, to the Treasurer thereof, and his successors in said office conditioned for the faithful performance of the duties of their respective offices, and to answer for the neglects and misdoings of their respective deputies, which bond shall by the said Sheriffs, within the

Condition.

time aforesaid, be filed in the office of the Clerk of the Court of Sessions, for the county in which said Sheriffs are respectively commissioned; and said bond shall be presented at the term of said Court of Sessions, which shall then next be holden in such county; to be by said Court approved, and when the same shall have been adjudged sufficient, the Clerk shall make record thereof, and certify the same on said bond, and a copy thereof being taken by said Clerk, he shall deliver the original to the Sheriff, who shall file the same in the office of the Treasurer of the State, within twenty days, after the same shall have been so approved.

To be approved by Sessions.

SEC. 2. *Be it further enacted,* That it shall be the duty of the county Attorney in each county respectively at the term of the Court of Sessions which shall be held therein on or next after the third Tuesday of June annually, to move the said Court to consider of the sufficiency of the security given by the Sheriffs in their respective counties, and they shall cause a record to be made of such determination by the Clerk, who shall certify the same to the Treasurer within thirty days thereafter, and if such security shall be adjudged insufficient, said Clerk shall also within ten days certify the same to the Sheriff of such county, who shall within twenty days after such notice, give a new bond with sufficient sureties, to be filed and approved as aforesaid, and if any county Attorney or Clerk shall neglect his duty in this particular, such Attorney or Clerk, shall forfeit and pay to the use of this State one hundred dollars, for each neglect, to be recovered by action of debt in the name of the Treasurer, whose duty it shall be to prosecute therefor.

Duty of county attorney.

Sufficiency of the bond to be certified annually.

SEC. 3. *Be it further enacted,* That if any Sheriff shall neglect to give the security required in the first section of this Act, and file the same in the office of the Treasurer of the State, or shall neglect to give the new security which may be required by the Justices of the Court of Sessions in his county, as herein before required and file the same in the Treasurer's office as aforesaid, he shall forfeit and pay to the use of this State, the sum of one hundred and fifty dollars for each month's neglect, to be recovered by action of debt in any Court proper to try the same; and it shall be the duty of the Attorney General to prosecute for the same,

Penalty for neglecting to give bond.

and the name of such Sheriff neglecting to give or renew his security as aforesaid, shall be certified by the Court of Sessions, holden in his county to the Governor and Council, and also to the Attorney General; and the Governor with the advice of Council, shall thereupon remove such Sheriff from his office, and appoint some other person in his stead, unless reasonable cause to the satisfaction of the Governor and Council, shall be assigned for said neglect. And unless said Sheriff, whose name and neglect shall be certified as aforesaid, shall give or renew his security as the case may be, to the satisfaction of the Governor and Council within twenty days after the said certificate shall be made as aforesaid.

To be removed.

Treasurers to state the amount of warrants,

and certify the names of sureties.

SEC. 4. *Be it further enacted*, That it shall be the duty of the Treasurer of the State, on the first Wednesday of January annually to make out a statement of the amount of all warrants in favour of the State, any other sums of money or balances that may be in the hands of, and due from the several Sheriffs in said State, and lay the same before the Governor and Council for their inspection, and shall also certify the names of the sureties, on their respective bonds, that in case they or any of them shall have become insufficient, or have moved out of the State, others may be required, and whenever for either of the reasons, it shall be deemed necessary by the Governor and Council, a new bond shall be given by any Sheriff thereto required, within sixty days after notice given him for that purpose, to be filed as aforesaid; and on neglect thereof, the office of such Sheriff shall become vacant, and the Governor with advice of Council, shall appoint some other person thereto.

Coroners to give bonds.

Condition.

SEC. 5. *Be it further enacted*, That all Coroners, who shall be appointed in any county in this State, before proceeding to discharge the duties of their office, shall give unto the Treasurer of the State a bond with sufficient sureties, to the satisfaction of the Court of Sessions, in their respective counties, for the faithful performance of the duties of their said office, and the acts and doings of all Coroners now in office who shall not within sixty days, from and after the passing of this Act, make out and execute to the Treasurer of said State a bond with sufficient sureties, and the same

file in the Clerk's office of the county in which such Coroner resides, to be approved as aforesaid, all their Acts and doings after the said sixty days, shall be null and void, and they shall be deemed to have forfeited their respective offices, and all authority to act under their commissions shall cease from and after that time. Or their acts to be void.

SEC. 6. *Be it further enacted*, That any person aggrieved at the neglect or misdoings of any Sheriff or his deputy, or of any Coroner, and having first ascertained the amount of his damages by judgment against said Sheriff or Coroner, shall be entitled to a certified copy of such Sheriff's or Coroner's bond, and shall have a right to commence and prosecute to final judgment and execution for his own benefit, any action thereon in the name of the Treasurer, said writ being first endorsed by the party for whose benefit such action is brought, or his agent or attorney, which endorser shall be alone answerable for all costs; and judgment, when for the defendants, shall be rendered accordingly against the party, for whose benefit such action is brought: *Provided*, That all such actions on Sheriffs' and Coroners' bonds, shall be brought always in the county where such Sheriff or Coroner shall have been commissioned respectively to act. Persons aggrieved entitled to a copy of bond, and to sub. Provide.

SEC. 7. *Be it further enacted*, That when judgment is rendered on any bond as aforesaid, execution shall be awarded for the sum found due to the party, for whose benefit said action was brought; and being part of the penalty forfeited. And any execution which shall issue on said judgment, shall express therein the name of the party for the use and benefit of whom the same was awarded, who may cause said execution to be levied on any personal or real estate of the debtor, which levy shall inure to such party for his sole use and benefit, to every intent and purpose whatever. Execution how awarded.

[Approved June 24, 1820.]

CHAPTER XCII.

An Act defining the general Powers and Duties, and regulating the office of Sheriffs, and of Constables.

Sheriff to serve all precepts, &c.

including those in which their own towns are interested, or parties.

Sheriffs and deputies, out of office, to serve precepts in their hands, &c.

Sheriff to have care and custody of gaols.

In case of death of Sheriff, his gaoler to continue in office until, &c.

Governor may appoint gaoler, when the Sheriff's office is vacant.

Such gaoler to give bond, &c.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Sheriff of each county in this State, shall have power, and it shall be his duty, and the duty of each of his deputies, to serve and execute within his county, all writs and precepts to him or them directed and committed, issued from good and lawful authority; including all writs and processes in which towns of which they are inhabitants are parties or interested. And all Sheriffs, when removed from their office, as well as their deputies, shall have power to execute all such precepts as may be in their hands at the time of their removal from office; and in every case of a vacancy in the office of Sheriff in any County, by death, resignation, removal or otherwise, every Deputy Sheriff in office under such Sheriff, having any writ or precept in his hands, at the time of such vacancy, shall have the same authority, and shall be under the same obligation to serve, execute and return such writ or precept, as if such Sheriff had continued in office. And the Sheriff of each county shall have the custody, rule, and charge of the gaol or gaols therein, and of all prisoners within such gaol or gaols, and shall keep the same himself personally, or by his deputy, for whom he shall be answerable; and in case of the death of the Sheriff of any county, any gaoler, by him specially appointed, shall continue in the office of gaoler, and retain and have the custody, rule and charge of the gaol of which he had the custody, rule and charge under such Sheriff; and of all prisoners within such gaol, or who may be afterwards committed to his custody, until a successor to such deceased Sheriff shall be appointed and qualified as the law directs; or until the Governor, by and with the advice of the Council, shall remove such gaoler and appoint another person; which removal and appointment, the Governor, by and with the advice of the Council, is authorized to make. And the gaoler so appointed, shall give such bonds, and in the same manner, as is required of a Sheriff, for the faithful performance of the

duties of his office; and shall continue in office during the vacancy in the office of Sheriff.

SEC. 2. *Be it further enacted*, That the defaults or misfeasan-
sances in office, of any gaoler, or deputy Sheriff, after the
death or resignation of any Sheriff, by whom he was appoint-
ed shall be adjudged a breach of the condition of the bond
given by such Sheriff: and actions for the malfeasance or
misfeasance of any Sheriff, or of any of his deputies, may
be sued against the executors or administrators of such
Sheriff, in the same manner as if the cause of such action
survived against the executor or administrator at the com-
mon law; and an attested copy of any Sheriff's bond, certi-
fied by the Treasurer of this State, shall be received as evi-
dence in any case: *Provided nevertheless*, That if in any
suit the execution of the bond shall be disputed, the Court
may order the Treasurer to bring the original bond with
him into Court.

Condition of
Sheriff's bond
to extend to
breaches by
gaoler or dep-
uty Sheriff af-
ter Sheriff's
death or resig-
nation.

Actions may
be sued
against execu-
tors of sheriffs.

Copy of Sher-
iff's bond, cer-
tified by
Treasurer of
State—legal
proof.

When signa-
ture is denied
original may
be produced.

SEC. 3. *Be it further enacted*, That if any Sheriff or his
deputy, shall unreasonably neglect or refuse to pay to any
person, any money received by him upon execution to the
use of such person, upon demand thereof being made, he
shall forfeit and pay to such person five times the lawful in-
terest of such money, so long as he shall so unreasonably
detain the same after such demand is made.

Sheriff neg-
lecting to
pay over mon-
ies collected
on execution,
liable to 30
per cent. in-
terest.

SEC. 4. *Be it further enacted*, That no Sheriff shall have
his body arrested upon mesne process, or upon an execu-
tion awarded upon a judgment consequent upon a civil ac-
tion, and that when judgment shall be rendered against any
person holding the office of Sheriff, either in his official or
private capacity, for any sum of money, the execution there-
of shall be issued against his goods, chattels and lands, but
not against his body; and if any execution issued against
the goods, chattels or lands of a person who holds the of-
fice of Sheriff, shall be returned not satisfied, the creditor
may file before the Governor and Council an attested copy
of such execution and return, and also serve such Sheriff
with a copy of such copy filed, attested by the Secretary to-
gether with notice under the hand of the Secretary, of the
day of filing such copy. And if such Sheriff shall not, with-
in forty days next after his being served with such copy and

Sheriff's body
not liable to
arrest, &c. in
civil action.

In case exe-
cution against
Sheriff be re-
turned unsatis-
fied, creditor
may lay a copy
before Gov-
ernor and
Council.

If debt be not
paid within
40 days after

notice, Sheriff to be removed.

Sheriff to be answerable to his successor for all prisoners, &c.

When Sheriff is removed, execution to be issued against him in common form.

Sheriff to bury the bodies of debtors dying in prison, if not delivered to their friends

Expenses how to be paid.

Clerks of Courts to return to State Treasurer certificate of all fines, &c.

Penalty for neglect.

notice, pay the creditor the full of his debt, together with reasonable costs of the copies and notifications aforesaid, the Governor, with the advice of Council, shall remove such Sheriff from his office, and shall appoint some other person to the same. And such Sheriffs shall be held answerable for the delivery over to their respective successors, of all prisoners which may be in their custody at the time of their removal, and for that intent shall still retain the keeping of the gaol or gaols in their respective counties, and the prisoners therein, until their successors shall be appointed and qualified, as the law directs. And when a Sheriff shall be removed from his office, the Clerk of the Court, from whence executions have been issued and returned not satisfied, shall be empowered as soon as another Sheriff shall be appointed and legally qualified, to make out alias executions in common form, as well against the body as the goods, chattels, and lands of such persons so removed.

SEC. 5. *Be it further enacted*, That when any person imprisoned for debt, or any other cause, shall die in any county of this State, it shall be the duty of the Sheriff or deputy gaoler to deliver the body of such deceased person to his relations or friends, if they shall request it; and if no application be made for such body, it shall be the duty of the Sheriff, or deputy gaoler, to bury the same in the common burying ground; and the expenses thereof shall be paid by the town in which such person had a legal settlement, if such person had been an inhabitant of this State; otherwise the expenses aforesaid shall be paid out of the treasury of this State.

SEC. 6. *Be it further enacted*, That the Clerk of the Supreme Judicial Court, and Circuit Court of Common Pleas, shall, within fifty days after the end of their Courts respectively, return into the office of the Treasurer of the State, a certificate of all fines, amercements, issues and forfeitures arising or imposed to the use of the State, by their respective Courts, on penalty of seventy dollars for each and every neglect, to be disposed of as follows, viz.—The one moiety to him or them who shall sue for the same, and the other moiety to the benefit of this State; and the Attorney General as

well as the county Attornies within their respective counties, be, and hereby are especially directed and enjoined to give information of, and prosecute for recovery of all such fines and forfeitures as may be incurred by the Clerks aforesaid, in consequence of their breach of this Act: and the said Clerks shall respectively return a like certificate into the Secretary's office, that the Legislature may thereby be enabled to settle with the Treasurer; and each Clerk of the Courts shall certify to the Treasurer of his county, the fines arising to the county from time to time, from convictions in the Circuit Court of Common Pleas, and the Supreme Judicial Court; and the Circuit Court of Common Pleas shall audit and settle the Sheriff's accounts for such fines, as shall have been by them imposed, and for forfeitures arising in said Courts respectively, and thereupon grant the Sheriff a full discharge.

Similar certificates to be returned to the Secretary's office.

C. C. Common Pleas to audit and settle Sheriff's account for fines, &c. in that Court.

SEC. 7. *Be it further enacted,* That any Sheriff, deputy Sheriff or Constable, being in the execution of his office, for the preservation of the peace, or for the apprehending or securing any person or persons for the breach of the same, or for any other criminal cause shall have lawful authority to require suitable aid and assistance therein. And if any person, being required by any Sheriff, deputy Sheriff or Constable in the name of the State, to aid and assist him in the execution of his office, as aforesaid, shall neglect or refuse so to do, and be thereof convicted, before any Court proper to try the same, such offender shall be fined, to the use of the county where the offence shall be committed, not less than three dollars, nor more than fifty dollars, according to the circumstances of the case; and if any such offender shall be unable, or shall not forthwith pay the said fine, such Court may punish him by imprisonment not exceeding thirty days.

Sheriffs, Constables, &c. may require aid in criminal cases.

Penalty for refusal.

SEC. 8. *Be it further enacted,* That if any person not being really and bona fide a Sheriff, deputy Sheriff or Constable, shall pretend himself to be either of said officers, and take upon himself to act as such, or to require any person or persons to aid or assist him in any matter appertaining to the duty of Sheriff, deputy Sheriff or Constable, he shall be fined not exceeding four hundred dollars, according to the

Penalty for a person assuming to act as sheriff, &c.

circumstances of his offence; one moiety thereof to the use of the State, and the other moiety to him or them who shall prosecute therefor.

Constables may serve writs and executions in personal actions to amount of \$100.

Provided they give bond to town Treasurer in \$200.

Penalty for acting before giving bond.

Remedy on Constables' bond.

Constables, in serving warrants or writs, may carry prisoners and things taken by them, to the Justice or prison.

SEC. 9. *Be it further enacted*, That any Constable in any town or plantation within this State, be, and he hereby is, authorized and empowered to serve upon any person or persons in the town or plantation to which he may belong, any writ, summons or execution, in any personal action, where the damage sued for or recovered shall not exceed one hundred dollars; including all writs and processes to them duly directed, in which towns or plantations of which they are inhabitants, are parties or interested, and return thereof to make to the Court to which the same may be returnable: *Provided however*, That every Constable, after being chosen, and before he serve any writ, or proceed to collect any execution, shall give to the Treasurer of his town, a bond in the sum of two hundred dollars, with two sureties, sufficient in the opinion of the Selectmen and town Clerk, for the faithful performance of his duties and trust, as to all processes by him served or executed; and for every process he shall serve or execute before giving such bond, he shall forfeit and pay not less than twenty, nor more than fifty dollars, recoverable to the use of any person, who shall sue for the same; and all persons suffering through the defaults or misdoings of such Constable, shall have the same remedies in law, on his bond, as are provided in respect to Sheriffs' bonds, and the like proceedings in both cases shall be had, such changes being made, as will make the process effectual.

SEC. 10. *Be it further enacted*, That any Constable of any town or plantation within this State, shall have authority, in the execution of the warrant, or writ to him directed by lawful authority, to convey as well any prisoner or prisoners, as things that they may have taken into their custody, either to the Justice issuing such warrant or writ, or to the common gaol or house of correction of the county where such Constable is an inhabitant, according as in the writ or warrant may be directed.

[Approved March 19, 1821.]

CHAPTER XCI

An Act describing the Duty and Pow

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, within the county for which he is appointed, writs and precepts, when the Sheriff or Coroner shall be a party to the same; and shall return Jurors *de talibus circumstantibus* the Sheriff of the county shall be in either party. And when the office of Sheriff in any county may be vacant by death, resignation, removal or otherwise, the several Coroners of such county be, and they hereby are respectively authorized and empowered to execute and return all writs and precepts, which are by law appointed to be executed and returned by the Sheriff, until another Sheriff for such county shall be appointed and legally qualified; and such Coroners shall have notice thereof, which it shall be the duty of every person who may hereafter be appointed Sheriff of any county, and legally qualified to execute said office, to give, as soon as may be, to the respective Coroners of the same county: and they shall take inquests of violent deaths committed, and casual deaths happening within their respective counties, and shall, before they enter upon the duties of their office, be sworn to the faithful discharge thereof, and give security before they proceed to act, in the manner prescribed in "An Act passed on the twenty fourth day of June in the year of our Lord, eighteen hundred and twenty, entitled "An Act providing that bonds shall be given by Sheriffs and Coroners to the Treasurer of this State, and giving remedies thereon;" and the same proceedings in all respects shall be had respecting Coroners' bonds and sureties; and Coroners shall be liable to the same forfeitures for like causes, to be recovered in like manner; and subject to removal from office in the same way, and to be proceeded against in the same manner in all respects, as are provided in the Act aforesaid with regard to Sheriffs.

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take an inquest

and in taking inquests of violent or casual deaths, &c.

To give security in the same manner as sheriffs.

Same proceedings to be had on their bonds, as Sheriffs.

Subject to removal as Sheriffs.

SEC. 2. **BE** it further enacted, That each Coroner shall, as soon as he shall be certified of the dead body of any per-

Mode of proceeding to

person supposed to have come to his death by violence or casualty, found or lying within his county, make out his warrant directed to the Constable of the town where the dead body is found or lying, or to the Constables of one or more of the three or four next adjacent towns, requiring them forthwith to summon a Jury of good and lawful men of the same town or towns, sufficient to make up nine in all, to appear before him at the time and place in such warrant mentioned and expressed; which warrant shall be in form following:

(SEAL.) — ss. 'To either of the Constables of B— in the said county of S—, Greeting.

Form of warrant.

These are in the name of the State of Maine, to require you immediately to summon and warn — good and lawful men of the said town of B— to appear before me, one of the Coroners of the said County of S— at the dwelling house of —, or at a place called — within the said town of B— at the hour of — then and there to inquire upon the view of the body of — there lying dead, how and in what manner he came to his death. Fail not herein at your peril. Given under my hand and seal, at B— the — day of — in the year of our Lord, —. W. G.

Constables' duty.

And every Constable to whom such warrant shall be directed and delivered, shall forthwith execute the same, and shall repair to the place where the dead body is, at the time mentioned, and make return of the warrant with his doings thereon, unto the Coroner that granted the same. And every Constable failing unnecessarily of executing such warrant, or of returning the same as aforesaid, shall forfeit the sum of ten dollars, and every person summoned as a Juror as aforesaid, that shall fail of appearance without having reasonable excuse therefor, shall forfeit seven dollars; which forfeitures shall be recovered by action of debt before any Court that can take cognizance of the same, and shall be applied to the use of the county. And the Coroner shall swear six or more of the Jurors that shall appear, and shall give the foreman by him appointed, his oath upon view of the body, in form following:

Penalty for neglect of Constable.
Penalty for non-attendance of Juror.

Coroner to swear Jurors:

and form of oath.

You solemnly swear that you will diligently inquire and true presentment make on behalf of this State, how and in

what manner A. B. who lies here dead, came to his death, and you shall deliver up to me, one of the Coroners of this county, a true inquest thereof, according to such evidence as shall be laid before you, and according to your knowledge, So help you God.

And then shall swear the other Jurors in form following :

Such oath as your foreman hath taken, you and each of you shall well and truly observe and keep. So help you God.

And the Jurors being sworn, the Coroner shall give them a charge upon their oaths, to declare of the death of the person, whether he died of felony, or of mischance, or accident ; and if of felony, who were principals, and who were accessaries ; with what instrument he was struck or wounded, and so of all prevailing circumstances, which may come by presumption ; and if by mischance or accident, whether by the act of man, and whether by hurt, fall, stroke, drowning or otherwise ; to inquire of the persons who were present, the finders of the body, his relations and neighbours, whether he was killed in the same place where he was found, and if elsewhere, by whom, and how he was brought from thence ; and of all circumstances relating to the said death. And if he died of his own felony, then to inquire of the manner, means or instrument, and of all circumstances concerning it. And the Jury being charged shall stand together, and proclamation shall be made for any person that can give evidence, to draw near, and that they shall be heard. And every Coroner is further empowered to send out his warrant for witnesses, commanding them to come before him, to be examined, and to declare their knowledge concerning the matter in question ; and he shall administer an oath to them in form following :

Coroners' charge to Jury.

Coroner to summon witnesses and swear them, and take evidence in writing.

You solemnly swear, that the evidence which you shall give to this inquest, concerning the death of A. B. here lying dead, shall be the truth, the whole truth, and nothing but the truth. So help you God.

Form of oath.

The evidence of such witnesses shall be in writing subscribed by them : and if they relate to the trial of any person concerned in the death, then shall the Coroner bind such witnesses by recognisance in a reasonable sum for their

May recognise witnesses, in case, &c.

personal appearance at the next Supreme Judicial Court, to be holden within or for the same county, there to give evidence accordingly; and commit to the common gaol of the county such witness or witnesses as shall refuse to recognise as aforesaid; and shall return to the same Court the inquisition, written evidence and recognisance by him taken.

Jury to deliver
verdict to Cor-
oner.

And the Jury having viewed the body, heard the evidence, and made all the inquiry within their power, they shall draw up and deliver unto the Coroner their verdict upon the death under consideration, in writing under their hands and seals, in form following:

Form of ver-
dict, in divers
cases.

—— ss. An inquisition taken at B—— within the said county of S—— the —— day of —— in the year of our Lord —— before W. G. gentleman, one of the Coroners of the said county of S—— upon the view of the body of A. B. there lying dead, by the oaths of —— yeomen, good and lawful men, who being charged and sworn to inquire for the State, when, how and by what means the said A. B. came to his death, upon their oaths do say —— [Then insert, how, when and by what means, with what instrument he was killed; and if it appears that he hath been murdered by a person known, then the inquisition shall be concluded in this form:] to wit, —— And so the Jurors aforesaid upon their oaths aforesaid, do say, that the aforesaid A. B. in manner and form aforesaid, then and there of his malice aforethought, did kill and murder against the peace and dignity of the State, and the laws of the same, —— [If it appears to be self-murder, then shall the inquisition be concluded thus:] And so the Jurors aforesaid, thus upon their oaths aforesaid do say, that the said A. B. in manner and form aforesaid then and there voluntarily and feloniously as a felon of himself, did kill and murder himself against the peace. [And if it appears that the death was by misfortune] And so the Jurors aforesaid, upon their oaths say, that the said A. B. in manner aforesaid, came to his death by misfortune. [If innocently by the hands of any person] The Jurors upon their oaths aforesaid do say, that the aforesaid D. R. the aforesaid A. B. by misfortune, and against and contrary to the will of him the said D. R. in manner and form aforesaid, did kill and slay. In witness,

whereof the said Coroner and Jurors to this inquisition have set their hands and seals, the day and year abovesaid. And upon an inquisition found before any Coroner of the death of any person, by the felony or misfortune of another, he shall speedily inform one or more of the Justices of the same county thereof, to the intent that the person killing, or being any way instrumental to the death, may be apprehended, examined and secured in order for trial.

Coroner in certain cases to notify Justice of the Peace.

SEC. 3. *Be it further enacted*, That every Coroner within the county for which he is appointed, shall, after the return of an inquisition of the Jury, upon the view of a dead body of any stranger, bury said body in a decent manner; and the expenses thereof, together with all the expenses of said inquisition and the Coroner's fees, shall be paid to said Coroner out of the Treasury of this State, an account of said expenses being first examined and allowed by the Legislature, in the same manner that accounts for State paupers are allowed: *Provided*, The Coroners who shall return the inquisition, shall certify under oath, that the person found dead, was a stranger not belonging to this State, according to the best of his knowledge and belief; otherwise the expenses of taking up and burial, shall be paid to such Coroner, by the town where such dead body was found, and repaid to them by the town to which said stranger belonged, if an inhabitant of this State; and the expenses of said inquisition shall be paid to the Coroner, by the county in which the inquisition shall be taken.

Coroners to bury deceased, and expenses how paid.

SEC. 4. *Be it further enacted*, That Coroners be, and they hereby are authorized and empowered to make service and return of all writs and processes to them duly directed, in which towns or plantations of which they are inhabitants, are parties or interested, any law, usage or custom to the contrary notwithstanding.

Coroners may serve writs, &c. in cases where their own towns are parties or interested.

[Approved March 19, 1821.]

CHAPTER XCIV.

An Act rendering valid the Doings and Acts of Coroners in certain cases.

Proceedings of
all Coroners
confirmed.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That the acts and doings of all Coroners commissioned under the authority of the Commonwealth of Massachusetts, in office and qualified according to law on the twenty fourth day of June, in the year of our Lord one thousand eight hundred and twenty, which were done and performed before the passing of this Act, shall not be deemed void in law by reason of any of the provisions of an Act, passed on said twenty fourth day of June, entitled, "An Act providing that bonds shall be given by Sheriffs and Coroners to the Treasurer of this State, and giving remedies therein."

[Approved March 17, 1821.]

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CHAPTER XCV.

An Act to exempt certain Goods and Chattels from attachment and execution, and from distress for Taxes.

Enumeration
of articles ex-
empted from
attachment,
execution and
distress.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That the wearing apparel, beds, bedsteads, bedding and household utensils of any debtor necessary for himself, his wife and children; the tools of any debtor necessary for his trade or occupation; the bibles and school books, which may be in actual use in his or her family; all cast iron stoves and stoves made of sheet iron, used exclusively for the purpose of warming buildings; one cow, one swine, ten sheep, with the wool which may be shorn from them, and thirty hundred of hay for the use of said cow, and two tons for the use of said sheep, shall be exempted from attachment, execution and distress: *Provided*, That not more than one such stove to each building, owned or occupied by the same person or family shall be so exempted: *And provided also*, That the beds and bedding, exempted as aforesaid, shall not exceed one bed, bedstead and necessary bedding to two persons: nor the household furniture, the value of fifty dollars.

[Approved January 23, 1821.]

CHAPTER XCVI.

An Act for the further relief of poor Prisoners committed by Execution for debt.

BE it enacted by the Senate and House of Representatives, in Legislature assembled, That whenever any poor prisoner is or shall be committed by execution for debt in any of the prisons of this State, and the judgment creditor is or shall be dead, and two months shall have elapsed since the death of such judgment creditor, without any administration being granted upon his estate, the notice required by law in such case shall be served upon the attorney of record of such judgment creditor in the suit whereon the judgment was rendered, upon which the execution whereby such debtor stands so committed was issued; and such notice being served upon such attorney in the same manner and within the same time as notice is to be served in other cases by law, shall be good and effectual to all intents and purposes, as the same would be if duly served upon the judgment creditor if living.

If Judgment creditor is dead,

notice served on the attorney of record:

[Approved June 27, 1820.]

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CHAPTER XCVII.

An Act to direct the Time and Manner of exhibiting the Accounts of County Treasurers, and the Estimates for County Taxes, and for other purposes.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled That the respective Courts of Sessions in the several counties of this State, at the terms of the said Courts holden next before the first day of January annually, shall make up and prepare estimates of taxes for all county charges, equal at least to defray the expenses which have accrued or may probably accrue for one year ensuing the said first day of January, including the building and repairing of gaols and Court houses, and their appertenances, with the debts due and owed by the said counties respectively; and the said estimates being so made and approved by the said Courts, shall be recorded by the respective Clerks in a book for that purpose to be provided

Courts of Sessions to prepare estimates of county taxes,

to be transmitted to the Secretary of State before the first Monday of January annually.

County Treasurers to exhibit their account annually, with estimates, &c. and deliver them to the Clerks.

Clerks to send them to Secretary of State, &c.

Treasurers, Attornies and Sheriffs to exhibit annually to Court of Sessions account of money, &c.

Courts authorized to adjust them and cause payment of balances.

C. Courts of Com. Pleas to allow and order payment of accounts of incidental expenses in said Courts.

and kept; and a fair copy of the said estimates shall be signed by the Chief Justice or senior Justice presiding in the said Courts, and attested by the Clerks thereof; and the said Clerks respectively shall transmit the same to the office of the Secretary of the State, on or before the first day of January annually, so that the said estimates may be laid before the Legislature for their approbation, at the session thereof which may be thereafter next holden.

SEC. 2. *Be it further enacted*, That the Treasurers of the several counties, be, and they are hereby directed to prepare and exhibit their accounts as county Treasurers annually, to the close of every year, to be accompanied with the estimates for county taxes, being first allowed and approved by the said Courts; and it shall be the duty of the said Treasurers to deliver the said accounts to the said Clerks of the Courts aforesaid; and it shall be the duty of the said Clerks to inclose and seal up the said Treasurers' accounts with the said estimate, and transmit them to the office of the Secretary of the State, that they may be examined and allowed by the Legislature, at the same time with the said estimates for county taxes.

SEC. 3. *Be it further enacted*, That it shall be the duty of the several county Treasurers, county Attornies, Sheriffs, and all other persons holding money or effects belonging to their respective counties, annually, or oftener, if thereunto required, to exhibit an account of the same to the said Court of Sessions, at such times as they shall appoint: and the same Courts are authorized to examine and adjust such accounts, and to make a reasonable allowance for all such services as are not provided for by law; and on settlement to cause the balances which shall be found due to be paid into, or from, (as the case may be) the several county Treasuries.

SEC. 4. *Be it further enacted*, That the several Circuit Courts of Common Pleas in this State, be, and they are hereby authorized and empowered to receive, examine, and allow the accounts, and order payment out of the Treasury of their respective counties, for services and expenses incident to said Courts, any law to the contrary notwithstanding.

[Approved March 10, 1821.]

CHAPTER XCVIII.

An Act concerning Registers of Deeds.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That there shall be chosen by ballot, in each county within this State, by such persons as are qualified to vote for Representatives, at the town and plantation meetings, on the second Monday of September, in the year of our Lord, one thousand eight hundred and twenty one, and every five years thence following, some discreet and suitable person to be Register of Deeds. And the Selectmen of towns, and Assessors of plantations shall receive, sort and count the votes of the qualified electors present, and declare the same; and the town or plantation Clerk shall form a list of the persons voted for, with the number of votes for each person against his name, and having recorded the same, shall transmit a certified copy of the record to the Clerk of the Court of Sessions within the county, on or before the first day of the term of said Court next after the said month of September; and it shall be the duty of said Court, on the second day of said term to examine the certified copies of the records aforesaid, returned by the Clerks of the towns and plantations within their county; and the person having a majority of all the votes legally returned, shall be declared Register of Deeds, and shall hold his office for the term of five years, and until some other person shall be chosen and qualified to act in his place. And the said Register shall be sworn to the faithful discharge of the duties of his office, and shall give bond with sufficient sureties to the Treasurer of the county, in the sum of two thousand dollars for the faithful discharge of his trust: *Provided*, That whenever the Register of Deeds shall be Treasurer of the county, such bond shall be given to the Clerk of the Court of Sessions.

Register of deeds to be chosen by ballot in September, 1821, and once every 5 years afterwards.

Mode of election.

Register so chosen, to be sworn, and to give bond to county treasurer, or Clerk of Sessions.

SEC. 2. *Be it further enacted*, That whenever it shall happen that no person shall have a majority of all the votes legally returned, for a Register of Deeds in any county within this State, it shall be the duty of the Court of Sessions to issue their warrants to the Selectmen of towns, and to the

When no choice is made by people, what proceedings are to be had at another trial.

Assessors of plantations, to call meetings of the qualified electors, to vote for a Register of Deeds; and the votes shall be received, sorted, counted and declared, and lists thereof recorded and certified to the Court of Sessions, in the manner prescribed in the first section of this Act; which certified lists shall be returned to the Clerk of the Court of Sessions previous to the time to which said Court shall adjourn, for the purpose of examining the same.

Register of Deeds to receive 17 cents duty on all deeds, &c. for use of county.

SEC. 3. *Be it further enacted*, That every Register of Deeds in this State, for each deed or instrument made for the conveyance of land, or any title therein, brought to his office to be recorded, shall, before he record the same, demand and receive, of the person bringing the same, seventeen cents; and on or before the first day of April annually, shall account on oath for, and pay to the Treasurer of the same county, all the duties that shall be so received; and said Register shall be allowed for receiving and paying said duties, at the rate of two per cent. thereon.

When Register is found guilty of misconduct, &c. in office, his records to be delivered to Clerk of Supreme Judicial Court.

SEC. 4. *Be it further enacted*, That when any Register of Deeds, upon the presentment of the Grand Jury, or information of the Attorney General, in the Supreme Judicial Court, shall by confession, demurrer, verdict or default, after reasonable notice, be found guilty of misconduct or misbehaviour in his said office; or that by reason of infirmity of body or mind, he is incapable of discharging the duties thereof; the said Court shall enter up judgment thereon that the same Register be removed and displaced from the said office; and thereupon issue a writ to the Sheriff of the same county, to take the books and papers, to the said office belonging, and them deliver over to the Clerk of said Court, to be by him carefully kept, until a Register shall be duly chosen and qualified as the law directs.

In case of death, resignation or removal of Register, what proceedings are to be had.

SEC. 5. *Be it further enacted*, That upon the death, resignation, or removal of any Register of Deeds, two or more Justices of the Sessions, living in or near the shire town of the county, shall issue their warrants, directed to the Selectmen of the several towns, and assessors of plantations, within such county, directing them to convene the inhabitants of their respective towns and plantations, qualified as aforesaid, and to proceed to the choice of some person quali-

fied as aforesaid, to fill up the vacancy ; and the said Justices shall make their warrants returnable to themselves at a day certain, and shall give notice to the other Justices of the Sessions of their proceedings therein, and request them to meet upon the day appointed for the return of the said warrants, at some certain place in the shire town ; and the major part of the Justices of such Court, who shall meet at the time and place assigned as aforesaid, shall examine the returns made as before directed, and the person having the majority of votes, after being sworn, and giving bonds as aforesaid, shall be the Register of Deeds for such county, until the time appointed by this Act for the election of Registers of Deeds throughout the State.

SEC. 6. *Be it further enacted*, That whenever a vacancy in the office of Register of Deeds in any county shall happen, the Clerk of the Supreme Judicial Court of such county, being first sworn to the faithful discharge of the trust, shall take into his custody the several books, wherein the deeds and conveyances of land are recorded, together with the deeds and other papers to the said office belonging. And the said Clerk shall receive all deeds and other papers brought to be recorded; during such vacancy, and he shall note thereon the time of their being received, and the record shall bear date accordingly; and such Clerk is also empowered during such vacancy, to make out attested copies of any such deeds and other papers and records to him committed as aforesaid; which copies shall be valid to all intents and purposes as though the same had been made out by any Register qualified as aforesaid; for which copies the said Clerk shall be allowed the same fees as is or may be provided for Registers in similar cases. And upon the appointment of a Register as aforesaid, he shall deliver up the said books, deeds and papers, into his hands.

In case of vacancy, Clerk of Supreme Judicial Court to be sworn— and take charge and perform certain duties of Register, during such vacancy.

[Approved March 19, 1821.]

CHAPTER XCIX.

An Act directing the time and manner of appointing County Treasurers, and for other purposes.

County Treasurer to be chosen annually on 2d Monday of September.

Mode of choosing.

Copy of record of votes to be sent under seal to next Court of Sessions.

Person chosen to be sworn and give bond.

and to continue in office till another is chosen and qualified.

In case of no choice what proceedings are to be had.

SEC. 1. **BE** it enacted by the Senate and House of Representatives in Legislature assembled, That there shall be annually chosen in each county within this State, on the second Monday of September, by the written votes of such persons as are by the Constitution qualified to vote for Representatives in the several towns and plantations, a discreet suitable person, being a freeholder and resident in the same county, for a county Treasurer; the votes to be counted and sorted in the town or plantation meeting by the Selectmen or Assessors thereof, and town or plantation Clerk; the names of the persons voted for, and the number each person had, shall be recorded by the Clerk in the town or plantation book, and an attested copy of such record shall be transmitted under seal to the next Court of Sessions to be held within and for the same county, on the first day of the Court's sitting; there to be opened and compared with the like returns from the several towns and plantations in such county: and the person having the majority of the said votes, and accepting of the said office, after being sworn to the faithful discharge of the trust before the said Court, or any two Justices, quorum unus, and giving bond for the faithful discharge of the trust, with sufficient sureties, in such penal sum as the Court shall direct, to the Clerk of said Court for the same county, for the time being, and his successor in that office, shall continue in the said office for the term of one year, and until some other person shall be chosen and qualified as aforesaid in his room. And in case upon comparing the votes returned as aforesaid, no one person shall have a majority of the whole number of votes returned, or the person chosen shall decline accepting the office, or after accepting, shall die or resign, or remove out of the county within the year; then, and in such case, it shall be lawful for the Justices of the same Court to appoint, by ballot, a suitable person, being a freeholder in the same county, to that office; and the person thus appointed by the

Court of Sessions, and accepting the office, and being sworn to the faithful discharge of the trust, and giving bond as before directed, shall be Treasurer of said county for the remainder of the year, and until some other person shall be chosen and qualified in manner as aforesaid.

SEC. 2. *Be it further enacted,* That all monies received by the county Treasurer, for the use of the county, shall be improved and employed by him for the defraying county charges, as the Court of Sessions, Circuit Court of Common Pleas, and the Supreme Judicial Court, shall, pursuant to law, from time to time, by their order in writing, direct and appoint; and each county Treasurer shall account with the Court of Sessions for the same county of which he is Treasurer, for all his receipts and payments; which Court shall make him such allowance for his executing the duties of his office as to them shall seem reasonable.

County Treasurer's duty as to paying county charges.

SEC. 3. *Be it further enacted,* That each county Treasurer, respectively, be, and hereby is authorized and empowered to draw in and enforce the payment of all county rates and taxes, assessed agreeably to the directions of law, by the same rules and methods prescribed for the Treasurer of the State to gather in the rates and taxes assessed for the use of the State, and shall annually lay before the Legislature an account of all monies that shall have been raised in the county to which he belongs by assessments on the several towns and places therein, or by any other way or manner by him received as county Treasurer, and how the same have been disposed of; and no further assessments shall be made on the several towns and places in the county to which he belongs until the said account has been offered to the Legislature and allowed by them.

To enforce payment of county taxes, in same manner as State Treasurer.

To lay an account annually before the Legislature, of monies raised, &c. and how disposed of.

SEC. 4. *Be it further enacted,* That from and after the passing of this Act, no person shall be eligible as county Treasurer, who holds the office of Attorney General, or who is empowered to act as Attorney for the State within the county, nor any person holding the office of Justice of the Circuit Court of Common Pleas, Clerk of the said Court, or Sheriff.

Persons not eligible to the office of county Treasurer.

SEC. 5. *Be it further enacted,* That in all civil actions, in which the State shall be a party, whether by scire fa-

Costs paid to clerks to be paid to county

Treasurer, who shall settle with State Treasurer, as in case of fines, penalties, &c.

cias, or other suit or process, the costs which may be taxed in favour of the State, and which may be paid before any execution shall issue, shall be paid to the Clerk of the Court in which said suit shall be pending, and by him immediately paid over, without any deduction, to the Treasurer of the county, who shall account for and settle the same with the State Treasurer, in the same manner as is provided by law for the settlement and adjustment of accounts by county treasurers of fines, penalties, and forfeitures and costs in criminal prosecutions.

[Approved March 15, 1821.]



CHAPTER C.

An Act respecting the Offices and Duties of the Attorney General and County Attornies.

County attornies to be appointed and sworn in same manner as Attorney General. Duty of county attornies.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That the Attornies for the State, in the several counties, shall be appointed, commissioned and sworn in the same manner as the Attorney General is; and it shall be the duty of the said county Attornies, within their proper counties, to appear and act in behalf of the State, and of their said counties respectively, in all cases in which the State or county may be a party, in the Circuit Courts of Common Pleas and the Supreme Judicial Court; in the absence of the Attorney General; and in such other prosecutions, in behalf of this State, as may be pointed out to them, by instructions from the Attorney General: *Provided,* That nothing herein contained shall be construed to excuse the Attorney General from attending to his official duties, as heretofore, in the Supreme Judicial Court.

Attorney General and county Attorney to receive no fees from any prosecutor, or to be counsel for either party in a civil action, depending on the same facts.

SEC. 2. *Be it further enacted,* That no Attorney General or county Attorney, shall receive any fee or reward, from or in behalf of any prosecutor, for services in any prosecution to which it shall be his official duty to attend; or during the pendency of such prosecution, be concerned as counsel or attorney, for either party, in any civil action depending on the same facts.

[Approved March 15, 1821.]

CHAPTER CI.

An Act concerning Notaries Public.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That every Notary Public shall constantly keep a seal of office, whereon shall be engraven, his name, and the words Notary Public, and Maine, together with the arms of the State or such other device as he may choose.

Notaries Public to have seal of office with device, &c. thereon.

SEC. 2. *Be it further enacted,* That it shall be the duty of each Notary Public, to note or enter of record, whenever requested, all losses or damages sustained or apprehended, by sea or land, and also all averages and such other matters as by mercantile usages, appertain to his office, and cause protest thereof to be duly and formally made. And all facts, extracts from documents and circumstances by him so noted, shall be sworn to, and subscribed by all the persons appearing to protest; and the Notary Public shall note, extend, and record the protest of the persons so appearing and deposing; and he shall grant authenticated copies thereof, under his signature and notarial seal, to all such as demand and pay for the same.

Duties of Notaries as to protests on marine losses, &c.

SEC. 3. *Be it further enacted,* That every Notary Public, when a foreign or inland Bill of Exchange, not duly honored by the drawee, is committed to him shall on request, go in person with such bill to the drawee and demand of him, or at his usual abode, acceptance or payment thereof, (as the case may be) and if he neglect or refuse to accept, or to pay the same, the said Notary Public shall note a protest thereof, and immediately enter of record a copy of said bill; and also the answer or reason given, why the drawee refuses to accept or pay the said bill, or his absence or silence, as the case may be, and on request, he shall, to any demandant, furnish a copy of his record, in due form of protest, under his hand and notarial seal: and in like manner, all notices to endorsers of promissory notes, and of the assignments of all obligations, contracts or other writings obligatory signed, may be given, noted of record, protested and certified on request of the person interested.

—As to foreign or inland bills of exchange.

Notices on promissory notes to endorsers and others.

Notaries may take depositions in perpetuum and to be used out of State.

—May grant warrants of survey on vessels, &c.

—To keep records of their acts, &c.

Records of Notary, on his decease or removal, to be deposited in Clerk's office.

Penalty for neglect to deposit such records.

Penalty for destroying or injuring them.

Clerks to keep and certify copies of such records.

SEC. 4. *Be it further enacted,* That every Notary Public duly sworn, be and he hereby is fully authorized and empowered to take depositions in perpetual remembrance of the thing, and depositions to be used or sent out of this State, to grant warrants of survey on vessels damaged, and to certify country products; and in general, to do and perform all acts and things usually done by Notaries Public.

SEC. 5. *Be it further enacted,* That it shall be the duty of every Notary Public, to note and record at length, in a book of records kept for the purpose, all acts, protests, depositions, and other things by him noted, or done in his official capacity: and all copies or certificates by him granted, shall be under his hand and notarial seal.

SEC. 6. *Be it further enacted,* That on the death, resignation, or removal from office of any Notary Public within this State, the records of the said Notary Public, together with all the papers relating to the business of the office shall be deposited in the office of the Clerk of the Judicial Courts for the same county, in which the said Notary Public resided, and any Notary Public who, on his resignation, or removal from office, shall neglect to deposit such records and papers in the Clerk's office as aforesaid, for the space of three months, shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars. And if any executor or administrator of any deceased Notary Public, shall neglect to lodge said records or papers aforesaid, which shall come into his hands, in the Clerk's office, for the space of three months after his acceptance of that trust, he shall forfeit and pay a sum not less than fifty dollars, nor more than five hundred dollars. And if any person shall knowingly destroy, deface, or conceal any records or papers of any Notary Public, he shall forfeit and pay a sum not less than two hundred dollars, nor more than one thousand dollars and shall be moreover liable to an action for damages by the party injured.

SEC. 7. *Be it further enacted,* That it shall be the duty of the several Clerks of the Courts aforesaid, to receive and safe keep, all the records and papers directed by this Act, to be deposited in their offices, and give attested copies of any of said records or papers, when required; for which

service each Clerk shall be allowed the same fees, as are or may be allowed by law to Notaries Public. And copies so given by the said Clerks, are hereby declared to be as valid as if the same had been given by the said Notaries. And all forfeitures under this Act, shall be, one half to the State, the other half to him or them who shall sue for the same, to be recovered in action of debt in the county where such Notary Public resided. Forfeitures, how distributed.

[Approved March 17, 1821.]

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CHAPTER CII.

An Act establishing the Duties to be paid by certain Officers therein named.

SEC. 1. **BE** *it enacted by the Senate and House of Representatives, in Legislature assembled,* That every Sheriff, every Clerk of any Court of record, every county Attorney, every Judge of Probate, every Register of Probate, every Justice of the Peace, every Coroner, every Notary Public, and every Inspector General, duly commissioned under the Government of the Commonwealth of Massachusetts, whether sworn to act as such or not, shall on or before the first day of February next take and subscribe the oaths required of like officers by the Constitution and Laws of this State, and each such Sheriff of the counties of York, Cumberland, Lincoln or Kennebec shall pay fifty dollars, and of any other county twenty five dollars, each such Clerk of the county of York, Cumberland, Lincoln or Kennebec, shall pay forty dollars, and of any other county twenty five dollars, each county Attorney shall pay five dollars, each such Judge of Probate shall pay seven dollars, each such Register of Probate shall pay ten dollars, each such Justice of the Peace shall pay five dollars, each such Coroner shall pay three dollars, and each such Inspector General shall pay twenty dollars to the Treasurer of his county; and if such Sheriff, Clerk, county Attorney, Judge of Probate, Register of Probate, Justice of the Peace, Coroner or Inspector General shall fail either to take such oath, or to pay the money hereby required, on or before the first day of February next, he shall be thereafterwards disqualified to act under the same Officers commissioned by Massachusetts to take and subscribe oaths, and to pay duties to county treasurer. Disqualified to act on failure.

commission, except to complete any business previously commenced under the authority of such commission.

Persons appointed under this State to pay duties. **Penalty of neglect.** SEC. 2. *Be it further enacted,* That every Sheriff, every Clerk of such Court, every county Attorney, every Judge of Probate, every Register of Probate, every Justice of the Peace, every Coroner, and every Inspector General, commissioned by the government of this State, shall within sixty days, from and after his being qualified to act under such commission, pay into the Treasury of his county the sum respectively as is herein before required of like officers, and if any officer mentioned in this Act shall fail to pay the sums herein required, he shall for each and every official act by him performed, forfeit and pay the sum of five dollars to be recovered by indictment to the use of the county where he resides, or by action of debt in any Court proper to try the same, to the use of the person who shall sue therefor.

Duty of county Treasurer. SEC. 3. *Be it further enacted,* That it shall be the duty of the county Treasurer, at all times when he shall make out his account current with the State for settlement to credit all sums he shall have received by virtue of this Act, and the names of the men from whom he shall have received such money, subsequent to his closing his next preceding account.

[Approved June 28, 1820.]

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CHAPTER CIII.

An Act relating to the payment of Duties by Officers.

BE *it enacted by the Senate and House of Representatives, in Legislature assembled,* That the duties required by "An Act establishing the duties to be paid by certain officers therein named," may at the option of the person paying the duty, be paid to the Treasurer of the State, or to the Treasurer of the county, as in said Act is directed.

[Approved March 17, 1821.]

CHAPTER CIV.

An Act directing before whom all Judicial and Civil Officers shall be qualified, where not otherwise provided for in the Constitution.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Justices of the Supreme Judicial Court, the Attorney General, Secretary, Treasurer, Adjutant General, and Quarter-Master General, shall take and subscribe the oath or affirmation required by the Constitution before the Governor and Council, when in session, and in their recess before any two members of the Council; and that every other person elected, appointed, or commissioned to any Judicial, Executive or Civil office, under this State, shall take and subscribe the same before any one of the Council, or before any one of the Magistrates commissioned by the Governor for that purpose, excepting in such cases where the Constitution has otherwise provided.

Certain officers to be sworn before Governor and Council, or two of the Council.

Others before any one of the dedimus.

SEC. 2. *Be it further enacted*, That a law passed the thirteenth day of June last, directing before whom all Judicial, Civil and Military Officers shall be qualified, be, and the same is hereby repealed.

Repealing clause.

[Approved February 10, 1821.]

CHAPTER CV.

An Act establishing and regulating the Fees of the several Officers and other persons therein mentioned.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the fees of the several persons hereafter mentioned for the services respectively annexed to their names, shall be as follows, viz.

JUSTICES' FEES.

For every blank writ of attachment and summons thereon, or original summons—*seventeen cents.*

Justices' fees.

For the declaration in each writ of attachment and summons thereon, or original summons triable before a Justice—*forty cents.*

Every subpoena, for one or more witnesses—*ten cents*.

For the entry of an action, or filing a complaint in civil causes, including filing of papers, swearing witnesses, examining, allowing, and taxing the bill of costs and entering up the judgment and recording the same—*sixty one cents*. The trial of an issue—*fifty cents*.

Copy of every original paper or record, if under a page—*ten cents*; if upwards of a page, at the rate of twelve cents per page.

Writ of execution—*twenty five cents*.

A recognisance to prosecute an appeal, including principal and surety—*twenty cents*.

Taking affidavits out of Court to be used in the trial of any cause actually depending—*twenty cents*; for the Justices travel therefor both going out and returning home, at the rate of *fifty cents* for every ten miles; for writing the deposition, caption and notification, at the rate of *twelve cents* per page: and the Justice who shall take any deposition shall certify his own and the deponent's fees and officer's fees and nothing more.

Taking affidavits, in perpetual remembrance of the thing, to each Justice—*twelve cents*; and for his travel and the writing, the same as in the case last mentioned.

Administering an oath to persons appointed to appraise estates, or to appraise and divide real estates, together with certificates of the same—*twenty cents*.

Administering an oath to one or more witnesses at the same time, before referees or arbitrators—*twenty cents*; and for travel for that purpose, the same as in the case of taking affidavits.

Taking the acknowledgement of a deed with one or more seals, provided it be at one and at the same time, and certifying the same—*seventeen cents*.

Granting a warrant, swearing appraisers, relating to strays, and entering the same—*thirty two cents*.

Administering oaths in all other cases with certificates, except oaths to town or parish officers—*twenty cents*.

Receiving a complaint and issuing a warrant in criminal cases—*fifty cents*.

Entering a complaint, in criminal prosecutions, swearing witnesses, rendering judgment and recording the same, examining, allowing, and taxing the costs and filing the papers—*seventy five cents*.

Recognising persons charged with crimes for their appearance at the Circuit Court of Common Pleas, or at the Supreme Judicial Court and for certifying and returning the same, with or without sureties—*twenty five cents*, to be paid by the person so recognising.

For a mittimus for the commitment of any person on a criminal accusation—*twenty five cents*.

Recognisance of debt and recording—*forty two cents*; drawing rule and acknowledging the same—*thirty three cents*.

Writ to remove a nuisance—*thirty three cents*.

CORONERS' FEES.

For serving a writ, summons or execution, and for collecting the monies due thereon, and for travel in returning precepts and inquisitions the same allowance, as is by this Act allowed to Sheriffs for similar services. Coroners' fees.

For a bail bond—*twenty five cents*; every trial where the Sheriff is concerned—*twenty five cents*; and the same for attending the Jury therein.

Granting a warrant and taking an inquisition on a dead body—*one dollar*; if more than one at the same time, and who came to their death by the same means—*twenty cents* for each one after the first.

Travel and expense for taking an inquisition—*one dollar a day* to each of the jurymen, for their travel, if above four miles out, *three cents* a mile each way; and for their services, *seventy five cents* per day, including time and expenses; the Constable for his attendance and expenses in summoning a Jury, *ninety cents* a day. And all the aforesaid charges of the inquisition shall be paid out of the county Treasury.

FEES OF JUDGES OF PROBATE.

For granting administration, where there is no litigation, *fifty cents*; and in other cases—*one dollar*. Judge of Probate's fees.

Appointing or allowing guardians to minors—*forty cents*, in each case, except in cases where one guardian is appointed for more than one minor, when the Judge shall be entitled to *five cents* each, for all more than one minor.

REGULATION OF FEES.

A decree respecting the probate of a will or codicil, where the same is not contested—*fifty cents*; and in all other cases—*one dollar*.

Examining and allowing an inventory, swearing the executor or executors, administrator or administrators—*twenty cents*.

Swearing appraisers of an estate—*fifteen cents*.

Examining and allowing accounts not exceeding two pages—*forty cents*; and for all above two pages, at the rate of *fifteen cents* each page.

A decree for settling an intestate estate—*forty cents*.

A citation—*fifteen cents*.

A summons for one or more witnesses—*ten cents*.

A quietus—*twenty cents*.

A warrant to appraise or divide estates—*thirty cents*.

Issuing a commission to receive and examine the claims of creditors when an estate is represented insolvent—*twenty cents*.

An order of distribution—*twenty cents*.

Granting an appeal to the Supreme Court—*twenty cents*.

REGISTER OF PROBATE'S FEES.

Register of
Probate's
Fees.

For writing a bond and letter of administration—*forty cents*.

Writing a bond and letter of guardianship and making record thereof for one minor—*sixty cents*; and if for more than one minor for whom the same guardian is appointed at the same time, *ten cents* for each minor more than one.

Drawing a decree respecting the probate of a will or codicil—*forty cents*.

Writing a bond for the executor—*twenty cents*.

Writing a warrant to appraise the estate of a person deceased—*twenty cents*.

A warrant to divide an intestate estate among the heirs, writing a warrant to set off a widow's dower, or a warrant to receive and examine the claims on an insolvent estate—*twenty cents*.

Entering the account of an executor, administrator or guardian and an allowance thereof, or for entering on an inventory the oath of an executor or administrator—*fifteen cents*.

Drawing up a decree on the settlement or partition of an estate—*twenty cents.*

A quietus—*twenty cents.*

For drawing an order of distribution—*twenty cents.*

A citation—*fifteen cents.*

A summons for a witness or witnesses—*ten cents.*

Proportioning an insolvent estate among the creditors thereto, at the rate of *fifteen cents* for every twelve creditors, every creditor's proportion being distinguished.

Recording any matter, at the rate of *twelve cents* each page and the same for a copy of any paper.

A bond of appeal *twenty cents*; and no fee shall be demanded by the Register of Probate for taking from the files in his office, or transporting to the place of the sitting of the Probate Court, such papers as are necessary in the settlement of any estate or account in the said Court.

In the Circuit Court of Common Pleas.

JUSTICES' FEES.

For the entry of an action, including the taxing of the bill of costs—*eighty cents.*

And in every action where an issue in law or fact is joined, one dollar, in addition to the fee for entry: *Provided however,* That in every action pending in any Circuit Court of Common Pleas, within this State which shall be defaulted, without being submitted to a Jury or the writ read to them after an issue in fact be joined, the Justices of the said Court, the Clerk thereof, or the Attorney in such action shall receive or tax no other or greater fees, than they severally would have been entitled to receive and tax, had no such issue been joined.

Fees of the
Justices of the
Circuit Court
of Common
Pleas.

Granting an appeal and taking a recognisance of the principal and surety or sureties—*twenty cents.*

Proving a deed—*twenty cents.*

Surrender of a principal into Court by his bail—*twenty cents.*

Granting a writ of protection—*twenty five cents.*

Entering a petition and making an order thereon for the sale or partition of real estate or for the location of public lots—*seventy cents.*

Accepting partition of real estate, or location on public lots—*forty cents.*

FEES OF THE CLERK OF THE CIRCUIT COURT OF COMMON PLEAS.

Fees of the
Clerk of C. C.
C. Pleas.

Accepting a report of referees, where the acceptance thereof is contested, *sixty cents*; otherwise—*thirty cents*.

For the entry of every action, entering up and recording the judgment whether on a verdict, demurrer entering non-suit or default—*one dollar and twenty cents*, of which sum the Clerk shall pay into the Treasury of his county *forty cents*, on or before the first day of January annually.

Acknowledging satisfaction of a judgment on the record—*eight cents*.

Entering an appeal, and recognising principal and sureties—*fifteen cents*.

Copies *twelve cents* a page. And in all actions appealed, the original depositions and other papers except the writ and officer's return thereon shall, after being certified by the Justice or Clerk, be carried up without leaving copies in the Court below. Continuing each cause to the next term—*twelve cents*.

Entering the surrender of a principal into Court, and making a record thereof—*fifteen cents*.

For entering a petition and order thereon for the partition or sale of real estate or location of public lots—*twenty cents*; and for recording such petition and order at the rate of *twelve cents* a page.

Entry of a rule of Court upon the parties' submitting a cause to referees—*fifteen cents*.

Proving a deed in Court, and certifying the same—*twenty cents*.

Every blank writ of scire facias or original summons—*fifteen cents*.

An original or alias writ of execution in personal matters, and filing the same when returned—*twenty five cents*.

A writ of possession in real actions—*forty cents*.

A writ of protection or habeas corpus—*twenty five cents*.

A subpoena for one or more witnesses—*ten cents*.

A duces tecum—*twenty five cents*.

Each venire facias, for judgment to be paid out of the county Treasury—*five cents*.

Opening and filing a deposition—*eight cents*.

Entering an indictment, presentment, complaint or infor-

mation, including the recording of the judgment of the Court therein, examining and casting the bill of costs and filing the papers—*sixty five cents.*

Discharging a recognisance—*ten cents.*

Each warrant for a criminal—*twenty cents.*

Examining and casting the Grand Jurors account yearly, and order thereon—*thirty cents.*

FEES OF THE CLERK OF THE COURT OF SESSIONS.

Each recognisance for an inn holder or retailer including principal and sureties and for transmitting the name of the licenced person to the Selectmen, and recording the licence—*fifteen cents.*

Fees of the Clerk of Court of Sessions.

A warrant for county tax—*twenty cents.*

Warrant to lay out or alter a road—*twenty cents.*

Examining any account—*eight cents.*

Recording the reports of highways and other matters by order of the Court—*twelve cents a page.*

Copies of all papers or records—*twelve cents a page.*

Keeping an account of the attendance of the Justices of the Court of Sessions, each term, to be paid out of the county Treasury—*seventy five cents.*

For the entry of a petition—*fifty cents.*

IN THE SUPREME JUDICIAL COURT, JUSTICES' FEES.

Entering an action or complaint, including the taxing of a bill of cost—*two dollars and twenty cents.*

Fees in S. J. Court. Justices' fees.

Allowing a writ of error, granting certiorari, habeas corpus, or other writ, on motion—*forty cents.*

Granting a writ of protection—*thirty cents.*

Proving a deed—*twenty cents.*

Entering a petition, and making order thereon for the sale or partition of real estate—*one dollar.*

Accepting a partition of real estate—*forty cents.*

The foregoing fees shall be received by the Clerk, and by him paid to the Treasurer of the State annually on or before the first day of January.

FEES OF THE CLERK IN THE SUPREME JUDICIAL COURT.

For the entry of an action or complaint, entering up and recording the judgment, whether on a verdict, demurrer,

Fees of Clerk of S. J. Court.

nonsuit, default, or state of facts—*one dollar and fifty five cents.*

A writ of review—*seventy cents.*

A writ of scire facias—*forty cents.*

An original writ of execution, including the taxing of the costs, and filing of the papers—*sixty five cents.*

An original writ of habere facias possessionem, including the taxing of the costs, and filing of the papers—*eighty cents.*

An alias writ of execution—*thirty five cents.*

An alias writ of facias habere possessionem—*fifty cents.*

A writ of habeas corpus—*forty cents.*

Copies of all papers containing less than one page—*ten cents each* ; of all papers containing more than a page, at the rate of *twelve cents* a page.

Entering a rule of Court—*fifteen cents.*

Acknowledging satisfaction of a judgment, on record, *twelve cents.*

Continuing each cause and entering the same next term—*twenty cents.*

Proving a deed in Court and certifying the same—*twenty cents.*

For each venire facias for Jurymen to be paid out of the county Treasuries respectively, on the Justices' certificate—*six cents.*

Every writ and seal, other than before mentioned—*forty cents.*

Every subpoena, for one or more witnesses—*ten cents.*

Each recognisance including principal and sureties—*twenty cents.*

Recording judgment in every criminal cause—*forty cents.*

A writ of protection—*twenty cents.*

Entering a discharge of a recognisance by proclamation, *fifteen cents.*

For opening and filing a deposition—*ten cents.*

ALLOWANCE TO PARTIES AND WITNESSES.

Allowance to
Parties and
Witnesses.

To parties recovering costs for an Attorney in all causes where an issue in law or fact is joined in the Supreme Judicial Court—*two dollars and fifty cents.*

And in all causes in the Circuit Court of Common Pleas where an issue in law or fact is joined—*one dollar and fifty cents.*

For the declaration in each writ—*fifty cents*.

For parties recovering costs, whether in the Supreme Judicial Court, Circuit Court of Common Pleas, Court of Sessions or before a Justice of the Peace—*thirty three cents* for each day's attendance, and travel ten miles to be accounted as one day.

Power of Attorney—*fifty cents*, and no plaintiff shall be allowed for more than three day's attendance when the defendant is defaulted, unless the defendant appear in Court and make answer to the plaintiff's suit; in which case if the defendant is defaulted after the expiration of three days, no attendance shall be taxed for the plaintiff, after the day when the default shall happen: *Provided nevertheless*, That when the party recovering costs in any Court shall live more than forty miles from the place of holding such Court, and such party shall not actually travel to attend the same Court, in such cause, there shall not be allowed for travel in taking the bill of costs, more than forty miles distance, unless such party shall employ some agent or attorney, who shall in fact travel more than forty miles for the special purpose of attending such Court in such cause.

In a criminal cause, where one or more defendants are tried by the Jury at the same time in the Supreme Judicial Court, or where the cause is determined by an issue in law, for the Attorney General, or person attending for the State, *two dollars and fifty cents*; and if there be no trial by the Jury, and the cause be not determined by an issue in law—*one dollar and twenty five cents*; and in all causes in the Circuit Court of Common Pleas—*one dollar and twenty five cents*. Drawing an indictment in the Supreme Judicial Court—*one dollar and twenty five cents*; and in the Circuit Court of Common Pleas—*sixty five cents*. But no fees for travel shall be allowed and taxed in any bill of costs in any suit in which the State shall be party.

Witnesses in civil or criminal causes, whether in the Supreme Judicial Court, Circuit Court of Common Pleas or Court of Sessions, *one dollar* for each days attendance, and *four cents* for each mile's travel going out and returning home: and before a Justice of the Peace, referees or arbitrators, *thirty three cents* per day, and for their travel the

same as at other Courts : *Provided* Such witnesses do personally attend said Courts respectively and certify in writing their attendance and travel.

SHERIFFS, CONSTABLES, AND CRIERS' FEES.

Sheriffs', Constables' and Criers' fees.

For the service of an original summons or scire facias, either by reading the same, or by copy on one defendant, *thirty cents* ; if on more than one defendant then for each other defendant so served—*thirty cents*.

For the service of a capias or attachment on one defendant with summons, *thirty cents* ; if served on more than one defendant then *thirty cents* for each defendant so served. And if the officer, by the written direction of the plaintiff or plaintiffs, his or their agent or attorney shall make a special service of any such writ, either by attaching property, or taking the body therefor, for such special service on each defendant on whom such writ shall be so served, the Sheriff shall be allowed *fifty cents*. And where the officer is by law directed to leave a copy in order to complete the service or shall give a copy of any precept upon demand thereof, he may charge at the rate of *twelve cents* a page.

For a bail bond, and writing the same, including principal and sureties, to be paid by the person admitted to bail, and taxed for him if he shall prevail—*twenty cents*.

Serving a writ of possession exclusive of fees for collecting on the costs, *one dollar and ten cents* ; if on more than one piece of land *seventy five cents* for each piece of land after the first.

The fees for collecting the costs on a writ of possession the same as on executions in personal actions.

Serving a warrant—*thirty cents*.

Sheriff's aid in criminal cases to each person for every twelve hours attendance including expenses, *one dollar*, and so in proportion for a greater or less time ; and *four cents* for each mile's travel going out and returning home.

Summoning witnesses in criminal cases, *ten cents* for each witness, and travel as in civil causes, unless in special cases, when the Court may increase the fees to what they may judge reasonable.

For the Sheriff's or Constable's attending the Court, and keeping the prisoner in criminal cases, *seventy five cents* for

every twelve hours ; and so in proportion for a greater or less time.

Levying executions in personal actions for the first one hundred dollars, *four cents* ; for every dollar above that, and not exceeding two hundred dollars, *two cents* for every dollar ; and for all above two hundred dollars, *one cent* for every dollar ; travel for the services of such execution, and also of mesne process or warrant to him directed, *four cents* a mile, the travel to be computed from the place of service to the Court or place of return by the usual way ; only one travel shall be allowed for one writ, execution or warrant, and if the same be served on more than one person, then the travel shall be computed from that place of service which may be most remote from the place of return, with all further necessary travel in serving such execution writ or warrant : but if the travel from the place of service to the place of return be more than fifty miles then only one cent a mile shall be allowed for all travel exceeding that distance. The travelling fees and fees of service shall be endorsed by the officer serving the same, otherwise they shall not be allowed.

Serving an execution upon a judgment of Court for partition of real estate, or assigning of dower, *one dollar* a day, and *four cents* a mile, out from the place of his abode. And no Sheriff shall demand or receive from any of his deputies more than at the rate of *twenty five per cent.* on the amount of fees for travel and service.

For returning the certificates of votes of the several towns for a Governor and Senators to the Secretary's office, *eight cents* a mile computing from the place of his abode to the Secretary's office, to be paid out of the Treasury of the State ; and but one travel shall be allowed for the whole.

To the officer attending the Grand Jury, for each days attendance, *seventy five cents*.

The officer attending the Traverse Jury for every cause to be paid with the Jury fees—*twenty five cents*.

For dispersing venires for Jurymen, Treasurer's warrants and proclamations of all kinds—*eight cents* each.

To each appraiser of real estate for extending execution

REGULATION OF FEES.

or assigning dower, *one dollar* a day, and travel at the rate of *four cents* a mile going out and returning home.

For every deputy Sheriff or Constable who shall attend the Supreme Judicial Court or Court of Sessions, or Circuit Court of Common Pleas by their order, *one dollar and fifty cents* a day, to be paid out of the county Treasury.

To the Sheriff for each days attendance in the Supreme Judicial Court or Circuit Court of Common Pleas, *five dollars*; and *two dollars* per day for attending the Court of Sessions, and at the rate of *two dollars* for every ten miles travel from his place of residence to the Court.

TO THE CRIER.

Crier. *Three dollars* per day, to be paid out of the county Treasury: *Provided*, The Crier shall not have any allowance for attending the Court of Sessions.

TO CONSTABLES.

Constable. For the service of venires, *twenty five cents*, and *four cents* a mile for travel to the Clerk's office, to be paid out of the county Treasury.

GAOLER'S FEES.

Gaoler's fees. Turning the key for each prisoner, committed or discharged—*twenty cents*.

Dieting each prisoner, such sum weekly as the Court of Sessions shall, from time to time, judge reasonable.

FOR MARRIAGES.

Town Clerk. To the Town Clerk for publishing the bands of Matrimony, recording the same, giving a certificate of the publication, and recording the marriage upon receiving the Justices' or Ministers' certificate thereof—*fifty cents*; to be paid by the man published, on receiving a certificate of the publication.

To every Minister or Justice of the Peace who shall lawfully solemnize a marriage and certify the same—*one dollar and twenty five cents*.

To the town Clerk for recording births and deaths—*eight cents* each. For a certificate of a birth or death—*ten cents*.

FEES IN THE SECRETARY'S OFFICE.

Secretary of State. For a certificate under the seal of the State, for the benefit of particular persons—*one dollar*.

For all copies for the benefit of particular persons, at the rate of *twelve cents* a page.

And it is to be understood that a page, as mentioned in this Act should contain two hundred and twenty four words.

COUNTY REGISTER'S FEES.

For entering and recording a deed or other paper of the length of one page or under, *twelve cents*. Register of Deeds fees.

And for certifying on the original the time when, and the book and page where the same may be recorded—*five cents*.

If the instrument recorded exceed the length of a page, at the rate of *fourteen cents* a page.

The fees to be paid at the offering of the instrument.

For all copies at the rate of *fourteen cents* a page.

For entering in the margin a discharge of a mortgage, to be signed by the person discharging the same—*twelve cents*.

ALLOWANCE TO JURORS.

SEC. 2. *Be it further enacted*, That the Grand Jurors attending at the Supreme Judicial Court and Circuit Court of Common Pleas, and the Jurors for trials attending either of said Courts, shall each be allowed, *one dollar and twenty five cents* a day for their attendance, and *six cents* a mile for their travel out and home, to be paid out of the county Treasury; and there shall be paid to the Clerk of the Supreme Judicial Court, and to the Clerk of the Circuit Court of Common Pleas, respectively, by the Plaintiff, or appellant, the sum of *seven dollars* for the trial of each civil action, for the use of the county; and the said Clerks respectively shall forthwith pay over the same to the county Treasurer. Allowance to Jurors.

SEC. 3. *Be it further enacted*, That the Clerks of the several Courts and other persons keeping public offices shall constantly have a list of the fees by this Act prescribed so far as it relates to them respectively, printed or wrote out in legible characters and hung in some convenient and conspicuous place in their respective offices. And the Register of Probate shall put and keep up in some conspicuous part of the room, a list of fees for Judge and Register, in every other place besides his office as aforesaid where a probate Court may be holden, during the holding of the said Court in such place. Clerks of Court to have list of fees hung up in their offices.

Register of Probate to keep list of his fees in his office.

Officers, if required, must give an account in writing of fees by them received.

SEC. 4. *Be it further enacted,* That every officer or other person upon receiving any such fees as are stated in this Act shall, if required by the person paying the same, make out a particular account of such fees, in writing, specifying for what they accrued upon pain of forfeiting to the party paying such fees, treble the sum by him or them so paid, to be recovered with costs by an action of debt, in any Court proper to try the same.

Penalty for wilfully and corruptly demanding and receiving unlawful fees or for witnesses falsely certifying, &c.

SEC. 5. *Be it further enacted,* That if any person shall wilfully and corruptly demand and receive any greater fee or fees for any of the services aforesaid, than are by this Act allowed and provided, or if any witness shall falsely, wilfully and corruptly certify that he has travelled a greater number of miles, or attended a greater number of days than he has actually travelled or attended, he shall forfeit and pay, not less than five dollars, nor more than thirty dollars for every offence, to be recovered with costs, either by presentment in the Supreme Judicial Court or Circuit Court of Common Pleas, in which case the forfeiture shall accrue to the State; or by action of debt in any Court of competent jurisdiction; in which case the forfeiture shall be for the use of any person who may sue for the same: But no such presentment or action shall be sustained, unless made or commenced within one year next after the time when the offence may be committed, and all persons who are or shall be entitled by any law or resolve, to an annual salary, and who also receive fees of office, for which they are required to be accountable, shall render to the Treasurer a quarterly account under oath of all fees of office by them received, which oath the Treasurer is hereby authorized to administer. And no person shall be permitted to receive his quarterly salary from the Treasury, until such account of the fees of office has been rendered: *Provided however,* That this Act shall not be considered as extending to the Justices of the Supreme Judicial Court.

Mode of recovery.

Limitation. Certain officers to render quarterly account of fees to Treasurer.

Salary of such officer not to be paid till such account is rendered.

Former compensation, in certain cases continued.

SEC. 6. *Be it further enacted,* That all officers and persons, entitled to fees under any Act in force in this State, who are not particularly provided for in this Act, shall be entitled to, and receive for their services the same compensation, which they have heretofore received for like services,

under the laws which were in force prior to the first day of March instant: *Provided*, That the Inspector General of butter and of lard shall not demand or receive from any of his or their deputies more than at the rate of twenty five per cent. on the amount of fees prescribed for the several services and duties, by them respectively performed; *And further provided*, That this Act shall not take effect, till after the last day of May next.

[Approved March 20, 1821.]

CHAPTER CVI.

An Act establishing the salary of certain Officers.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the sum of fifteen hundred dollars shall be allowed and paid to the Governor annually out of the Treasury of this State; that the sum of eighteen hundred dollars shall be allowed and paid to the Chief Justice of the Supreme Judicial Court, and the sum of fifteen hundred dollars to each of the other Justices of said Court; that the sum of eight hundred dollars shall be allowed and paid to the Attorney General; and to the Treasurer, the sum of nine hundred dollars; to the Secretary of State and the Adjutant General, each, the sum of seven hundred dollars; which said sums shall be paid to said officers respectively, in quarterly payments.

SEC. 2. *Be it further enacted*, That the Attorney General and the Secretary of State shall annually account with the Treasurer of this State for all fees which they shall receive in their respective offices.

[Approved June 19, 1820.]

CHAPTER CVII.

An Act establishing the Salaries of the Judges of Probate.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That from and after the pass-
Salaries of
Judges of Pro-

bats of the
several coun-
ties, viz.

York.

Cumberland.

Lincoln.

Kennebec.

Hancock.

Oxford.

Somerset.

Washington.

Penobscot.

Registers of
Probate to
keep account
of fees &c.

and pay to the
county Treas-
urer every
three months.

Repeal.

ing of this Act, there shall be allowed and paid out of the Treasuries of the several counties in this State, to the respective Judges of Probate, the following sums which shall be in full for their services; to the Judge of Probate for the county of York, two hundred and seventy five dollars; for the county of Cumberland, three hundred dollars; for the county of Lincoln, three hundred dollars; for the county of Kennebec, two hundred and seventy five dollars; for the county of Hancock, two hundred and twenty five dollars; for the county of Oxford, one hundred and seventy five dollars; for the county of Somerset, one hundred and twenty five dollars; for the county of Washington, one hundred and fifty dollars; for the county of Penobscot, one hundred and fifty dollars; which salaries shall be paid in equal quarterly payments.

SEC. 2. *Be it further enacted*, That the Registers of Probate in the respective counties, shall keep an account of all fees which by law accrue to the several Judges of Probate, and shall at the end of every three months, pay to each of the county Treasurers the amount they may have received during said term.

SEC. 6. *Be it further enacted*, That all laws now in force inconsistent with the provisions of this Act, be, and they are hereby repealed.

[Approved March 19, 1821.]

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CHAPTER CVIII.

An Act for the safe keeping of the Records of the several Courts of Justice.

Registers of
Probate to
give bond to
the county
Treasurer.

Condition of
such bond.

SEC. 1. **BE** it enacted by the Senate and House of Representatives, in Legislature assembled, That the Registers of the several Probate Courts that may hereafter be appointed to that office, shall, before they enter upon the duties of their said respective offices, severally give bond to the Treasurer of the county to which they severally belong, in a sum not less than one hundred or more than one thousand dollars, at the discretion of the Court to which they officiate, with one or more sufficient sureties for the faithful discharge of their trust; and for keeping up seasonably and in good order the

records of the same Court; and also to make and keep convenient and correct alphabets of the records of which they shall respectively be appointed officers and keepers.

SEC. 2. *Be it further enacted,* That any Clerk of the Judicial Courts or Register of Probate, who after giving bond as by law, and in the preceding section required, shall incur a forfeiture thereof, shall be and hereby is declared incapable of sustaining or holding the said office; and if either of the said Clerks or Registers shall have neglected to complete his records for more than six months, at any one time (sickness or any extraordinary casualty excepted) such neglect shall be adjudged a forfeiture of the bond of such Clerk or Register.

Effect of the forfeiture of Register's or Clerk's bond.

What neglect shall be adjudged a forfeiture.

SEC. 3. *Be it further enacted,* That the Justices and Judges of the said several Courts are hereby required and directed to inspect the conduct of their several Clerks and Registers, with respect to the records aforesaid; and upon a deficiency therein, such Judge and Justices shall give information thereof, in writing to the Treasurer who has the delinquent's bond in keeping; which Treasurer shall forthwith put the same in suit; and the money recovered on such suit shall be applied for bringing up the deficient records, under the direction of the respective Judge or Judges of the Court where such deficiency shall happen; and if there be a surplusage from the bond of a Register of Probate after making up the records, the same shall enure to the use of the county whereof the plaintiff is Treasurer; and if there be a surplusage on such bond of the Clerk of the Judicial Courts, such surplusage shall enure to the use of the State; and if the penalty of the bond incurred shall be insufficient to make up the deficient records, the estate of the deficient Clerk or Register shall be liable for the residue.

Justices and Judges to inspect their records, &c. and upon deficiency found—to direct Treasurer to put delinquent's bond in suit—

Proceedings therein.

If penalty of bond be insufficient, Clerk or Register's estate liable to make up records.

SEC. 4. *Be it further enacted,* That in all cases where real estate shall have been set off, in satisfaction of any execution which shall have been issued by any Justice of the Peace, under either of the Acts of the Commonwealth of Massachusetts, entitled "An Act for rendering processes in law less expensive," if such Justice shall have deceased or removed out of the State without having completed his record, and the title to such real estate, founded on the ex-

In establishing a title to lands levied on by execution from a Justice under the confession Act, so called, what shall be considered legal proof

Clerks, to whom such records of Justices have been returned, to keep, and certify the same.

tent of such execution, shall be drawn in question in any action, the execution creditor or creditors, or the person or persons claiming such title under him or them, shall be admitted to show in evidence of his title a copy of the original writ, with the officer's return thereon and a copy of the execution, with the officer's return thereon registered according to law ; which said copies, duly authenticated by the proper certifying officers thereof, shall be sufficient evidence of the judgment on which such execution issued as aforesaid. And the Clerks of the Judicial Courts in the several counties wherein such judgments were respectively rendered ; and with whom the respective records thereof, together with the original processes, and all the papers relating thereto, may have been returned, shall be the proper persons to keep and certify the same.

[Approved March 19, 1821.]

CHAPTER CIX.

An Act to provide for the safe keeping of Public Records, and for regulating the quality of paper for Books of Public Records.

Each county to have fire-proof building for public records.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That it shall be the duty of the Court of Sessions in each county in this State, to provide a suitable fire-proof building or buildings of brick or stone, where the same has not already been done, for the safe keeping of records, files, papers and documents, which now remain, or shall hereafter accumulate in the offices of the Register of Deeds, Register of Probate and Clerk of the Judicial Courts of this State ; which building or buildings shall contain separate fire proof rooms for said offices with suitable alcoves, cases and boxes for preserving the said records, files, papers and documents.

Records to be made on linen paper, &c.

SEC. 2. *Be it further enacted,* That the Records in the offices aforesaid, shall hereafter be made and entered on paper of a firm texture, well glazed and finished, the principal ingredient of which shall be linen.

[Approved January 27, 1821.]

CHAPTER CX.

An Act for providing and regulating Prisons.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That the Justices of the Court of Sessions shall, from time to time, assess the polls and estates within their several counties, in such sums as may be necessary to erect and keep in repair a good and sufficient gaol in each town where a Court by law is to be holden; and to direct and order the building and repairing such gaols, according to their discretion. And in the prisons within the several counties within this State, there shall be provided by the Justices of the Court of Sessions, and at the expense of each county, respectively, sufficient and convenient apartments for receiving and lodging prisoners for debt, separate and distinct from felons and other criminals; and it shall be the duty of the said Justices, at the beginning of every session, to inquire into the state of the prisons in their respective counties, with respect to the security of such prisons from escape, the condition and accommodation of the prisoners; and shall, from time to time, take such measures as may best tend to secure them from escape and infection; *Provided nevertheless,* That the Courts of Sessions shall not assess any greater sum of money to defray county charges, than they shall be authorized by the Legislature to assess.

Court of Sessions in each county to raise money for building and repairing prisons,

and cause them to be built and repaired. Apartments to be furnished for debtors separate from felons and other criminals.

Court at every session to inquire as to the state of prison, &c. and prisoners.

Assessments to be authorized by legislature.

SEC. 2. *Be it further enacted,* That the Sheriffs of the respective counties shall keep a true and exact calendar, or register of all prisoners committed to any prison under his care, and that the same shall be kept in a large bound book, provided and kept for that only purpose; and in the same book shall be distinctly and fairly registered the names of all prisoners who shall, from time to time, be committed to prison (beginning with the names of those who may be prisoners when this law shall take place) with their names, places of abode, additions, the time of their commitment, for what cause, and by what authority committed; and of such as are committed for criminal offences, a description of their persons; and also from time to time, as any prisoner shall

Sheriff to keep a calendar of prisoners.

Form of it, and particulars to be entered,

be liberated, the Sheriff shall also register in the same book the name and description of the person as aforesaid, the time when, and the authority by which, such liberation took place; and if any prisoner escapes, the time and manner of the escape shall be noted in the said book.

Warrants, mittimus, &c. to be preserved, and

delivered over to succeeding sheriff, on penalty, &c.

Gaol keeper at the opening of each Court to return list of prisoners, &c.

Form of list, &c.

Penalty for neglect.

Prisoners committed on mesne process to be detained but 30 days after judgment, unless taken in execution,

SEC. 3. *Be it further enacted,* That all warrants, mittimus, writs and instruments of any kind, or the attested copies of them, by which any prisoner shall be committed, enlarged or liberated, shall be safely kept, regularly filed, in their order of time, and, together with the said calendar, or register, shall be safely kept in a suitable box for that purpose; and upon the death or removal of any Sheriff, shall be delivered to his successor in the office, on the penalty of two hundred dollars, to be paid by the Sheriff removed or his executors or administrators, in case of the death of the Sheriff; to be recovered by any person, who shall prosecute therefor, in any Court proper to try the same.

SEC. 4. *Be it further enacted,* That every gaoler or prison keeper, at the opening of the Supreme Judicial Court, or the Circuit Court of Common Pleas, within the county where he keeps the gaol shall return a list of prisoners in his custody, therein certifying the cause for which, and the persons by whom they were committed, and the names of all persons who shall be committed during the sitting of either of the said Courts, with the cause of their commitment, that the Justices of the same Courts respectively may take cognisance thereof, and as well for the state, as the parties, may proceed to make deliverance of such prisoners according to law, for the crimes proper to the jurisdiction of the same Courts respectively; and also shall have the said calendar or register of prisoners ready to be inspected by the said Courts; and if any gaoler shall make default herein, he shall be fined at the discretion of the Court.

SEC. 5. *Be it further enacted,* That no person, imprisoned upon mesne process, shall be held in prison, upon such process, above the space of thirty days next after the entering up final judgment upon the writ whereby he is committed, unless he shall be continued there, by having his body taken in execution, nor shall the prison keeper dis-

charge any such prisoner, unless judgment is given in his favor, until thirty days next after the said judgment is entered up, unless the party at whose suit he was committed, shall give order in writing for his discharge, and shall pay the legal fees of the gaoler.

and not to be discharged within 30 days, unless by order in writing.

SEC. 6. *Be it further enacted*, That it shall be the duty of the Sheriffs of the several counties within this State, to see that the gaols in their respective counties are kept in as cleanly and healthy condition as may be, and cause the walls thereof to be whitewashed with lime in April or May in every year, and as often as the Court of Sessions shall order the same, at the expense of the county; they shall also see that strict attention is paid to the personal cleanliness of the prisoners as far as may be.

Sheriff to cause prisons to be cleanly and white-washed annually in April or May, or oftener if, &c.

SEC. 7. *Be it further enacted*, That it shall be the duty of every gaoler or prison keeper to keep prisoners, committed for debt, separate and apart from felons, convicts, and prisoners committed upon charge of felony or other infamous crimes. And he shall also keep all minors who are committed to prison upon conviction or charge of any crime, and all prisoners in his custody upon a first conviction or charge of any crime, as separate and distinct from those who are notorious offenders, or who have been convicted more than once of any felony, or other infamous crime, as the construction and state of their respective prisons will admit.

Sheriff to keep debtors separate from convicts, &c.

and minors, &c. separate from notorious offenders, &c.

SEC. 8. *Be it further enacted*, That no prisoner who is confined in any gaol within this State, either upon conviction and sentence for any crime, or upon charge of any crime before conviction, shall be allowed to have or drink any ardent or spiritous liquor, or any mixed liquor, part of which is spiritous, unless the physician, who is authorized to attend upon the sick in such prison, shall certify in writing that the health of such prisoner requires it; in which case he shall be allowed the quantity prescribed by such physician and no more.

Prisoners committed for crimes, &c. not to be allowed spiritous liquors,

unless in case of sickness, ,

SEC. 9. *Be it further enacted*, That no person committed to gaol on execution or mesne process, who shall apply to the Overseers of the poor for relief, shall be permitted to have and use any spirituous liquors, without the consent of

nor prisoners committed for debt, if they apply to overseers for relief.

Penalty for violation and mode of recovery.

the said Overseers. And if the keeper of any gaol, or other person shall give, sell or deliver to any such prisoner, or to any other person for his use, any spiritous liquors without the consent in writing of the said Overseers or one of them, first had and obtained, shall forfeit and pay for each offence a sum not less than five, nor more than ten dollars, to be recovered by complaint to any Justice of the Peace for the same county; one moiety thereof to him who shall prosecute for the same, the other moiety to the use of the poor of the town where the gaol is situated. And it is hereby made the duty of the Sheriff, Gaoler and Overseers of the poor to prosecute for all offences which may come to their knowledge against the provisions of this section.

Penalty for violating seventh and eighth sections of this Act.

SEC. 10. *Be it further enacted*, That any gaoler or prison keeper, who shall wilfully, negligently or unnecessarily cause or suffer prisoners of different descriptions to be confined and kept together in the prison under his care, contrary to the provisions of the seventh section of this Act, or shall voluntarily or negligently suffer any prisoner in his custody, upon conviction or charge of any crime, to have or drink any spiritous liquor, or mixed liquor, part whereof is spiritous, contrary to the provisions of the eighth section of this Act, shall, in each case, forfeit the sum of twenty five dollars for the first offence, to be recovered in an action of debt by any person who will sue for the same, to his own use, in any Circuit Court of Common Pleas, or by indictment in the same Court; in which case the forfeiture shall be to the use of the county. And for a second offence, such gaoler or prison keeper, shall forfeit the sum of fifty dollars, to be recovered in manner and to the uses aforesaid; and shall also be removed from his office, and be rendered and become incapable of holding the office of Sheriff, deputy Sheriff or gaoler, for the term of five years. And it shall be the duty of the Grand Jurors of the said Court, diligently to inquire of, and truly to present, all offences against the provisions of this Act.

Mode of recovery.

Grand Jurors to present violations.

Punishment for suffering a voluntary escape.

SEC. 11. *Be it further enacted*, That every gaoler or prison keeper that shall voluntarily suffer any prisoner committed unto him to escape, shall suffer and undergo the like pains. punishment and penalties, as the prisoner, so escap-

ing, should by law, for the crime or crimes wherewith he stood charged, if he had been convicted thereof.

SEC. 12. *Be it further enacted*, That if any gaoler or prison keeper shall, through negligence, suffer any prisoner accused of any crime to escape, he shall pay such fine as the Justices of the Court, before whom he is convicted, shall in their discretion inflict, according to the nature of the offence for which the escaped prisoner stood committed: *Provided nevertheless*, That if any person who stands committed for debt, shall escape from prison, and the Sheriff, the gaoler or prison keeper shall, within three months next after such escape, recover the prisoner so escaped, and return him back to prison again, then the Sheriff shall be liable to nothing further than the cost of any action that may have been commenced against him for such escape; and all fines arising upon the breach of this Act, excepting the ninth and tenth sections thereof, shall be applied to the use of building and repairing the gaol or gaols in the county where the offence is committed, and shall be paid to the Treasurer of the county, for that purpose.

Penalty for suffering a negligent escape.

Proviso, if retaken on fresh pursuit.

Appropriation of fines.

SEC. 13. *Be it further enacted*, That if any person shall directly or indirectly, without the knowledge or privity of the keeper, convey any instrument, tool or other thing whatsoever, to any prisoner, or into any prison, whereby any prisoner might break the prison, or work himself unlawfully out of the same, every person so offending shall forfeit and pay such fine as by the discretion of the Court shall be imposed, not exceeding three hundred dollars, according to the nature of the cause of the prisoner's commitment; or suffer such corporal punishment, not exceeding forty stripes, as the Court shall inflict; and if it shall so happen that any prisoner shall make his escape by means of any instrument, tool or other thing so conveyed, without the knowledge and privity of the keeper, the person so conveying the same shall be liable to pay all such sums of money as the prisoner stood committed for; and shall have inflicted upon him all such punishment as the escaped prisoner would be liable unto, if he had been convicted of the charge for which he stood committed, unless such prisoner would have been liable to capital punishment; in which case, the person assisting in such escape shall be punished by fine, imprisonment or sit-

Punishment for conveying tools, &c. to a prisoner to aid his escape, &c.

Punishment in case of actual escape.

ting on the gallows with a rope about his neck, or by solitary imprisonment for a term not exceeding three months, and confinement to hard labour for a term not exceeding five years; or any one or more of the said punishments, as the Court shall think proper to inflict.

Where escape happens through insufficiency of the gaol, Sheriff to be chargeable.

Court of Sessions to assess on the county the sum recovered of the Sheriff.

And in case they do not in 6 months, Sheriff may sue the county, for indemnity.

Mode of serving writ.

Court of Sessions may appoint an agent.

Action to be continued, in case, &c.

Debt may be collected of any inhabitants of the county.

SEC. 14. *Be it further enacted*, That where the escape of any prisoner shall happen through the insufficiency of the gaol, or the negligence of the Sheriff or gaoler, the Sheriff of the county, in which the escape happens, shall stand chargeable to the plaintiff, creditor or other person at whose suit or for whose debt he was committed, or to whose use any forfeiture was adjudged against such prisoner; and in case the escape shall happen through the insufficiency of the gaol, the Court of Sessions in the county shall have power and authority to assess the sum or sums upon the polls and estates of the county, and to order the county Treasurer to pay the same over to the Sheriff of the county; and if the Court of Sessions shall not make such assessment, and if the Treasurer shall not pay such sum or sums within six months next after the demand shall be laid before the Court of Sessions, then the Sheriff of the county may bring his action against the inhabitants of such county, to be heard and tried, either in that or one of the next adjoining counties, at his election; and an attested copy of the writ being left thirty days before the sitting of the Court, with the county Treasurer, shall be held and adjudged to be sufficient notice of the suit; and the Justices of the Court of Sessions shall have full power to appoint an agent or agents to appear and defend against such action; and when it shall so happen that the suit shall be commenced in another county, and no Court of Sessions shall be holden within the county sued, between the time of the service of the writ, and the sitting of the Court before which the action is brought, the cause shall be continued one term; and all advantages shall be saved to the defendants, as though they had appeared at the first term; and if judgment shall be given against the county, the debt may be levied by execution upon the goods, chattels or lands of any inhabitant or inhabitants of the county, who shall thereupon have his or their action jointly or severally in like manner against the county, to recover the monies so levied of him or them.

SEC. 15. *Be it further enacted,* That the keepers of the several gaols within this State, shall under the penalties as by law are provided for the custody and safe keeping the prisoners thereof, take custody of, and safely keep all prisoners committed, under the authority of the United States, until they shall be discharged by due course of the laws thereof: *Provided,* That nothing contained in this Act shall be so construed, as to authorize the keepers of the said gaols to take custody of, and keep within said gaols any prisoners committed by any other authority than the Judicial authority of the United States.

Keepers of gaols to receive and detain United States Prisoners committed by judicial authority.

SEC. 16. *Be it further enacted,* That the several Treasurers of the respective counties within this State, and their successors, be and they are hereby authorized and directed, to receive for the use of their respective counties, to defray the county charges arising therein, all such monies as the United States have agreed to pay for the use and keeping of such gaols, and to account for the same according to law,

County Treasurers to receive the monies paid for keeping such prisoners.

[Approved March 19, 1821.]

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CHAPTER CXI.

An Act respecting Houses of Correction, and for suppressing and punishing of Rogues, Vagabonds, common Beggars and other idle or disorderly persons.

SEC. 1. *BE it enacted by the Senate and House of Representatives, in Legislature assembled,* That there shall be erected built or otherwise provided by the Court of Sessions, in every county within this State, at the charge of such county, a fit and convenient house or houses of correction (where such house is not already provided) with convenient accommodations thereunto adjoining and belonging; to be used and employed for the keeping, correcting and setting to work of rogues, vagabonds, common beggars and other idle or disorderly persons. And until such house or houses of correction be erected, built or otherwise provided, the common prison in each county may be made use of for that purpose.

Each county to be provided with a house of correction.

Common prisons to be used as such, until houses of correction are provided.

SEC. 2. *Be it further enacted,* That the Court of Sessions in each county may nominate and appoint, at their will and pleasure, a suitable person to be master of such house of correction; and also to make, ordain and establish such

Court of Sessions may appoint master of such house and establish regulations, &c.

rules and orders as may be necessary (not repugnant to the laws of this State) for the ruling, governing and punishing of such persons as may be there committed.

Court of Sessions in each county may appoint overseers of such house.

Power and duty of such overseers.

Their compensation.

Court of Sessions may remove them ;

and examine the register and accounts of overseers.

Rogues, vagabonds, &c. may be sent to the house of correction.

SEC. 3. *Be it further enacted,* That the Courts of Sessions in their respective counties, where the circumstances may require it, be, and hereby are authorized and empowered, annually, to appoint three or five suitable and discreet freeholders of their county, living near the house of correction, to be overseers of such house ; who shall have power to see that the rules appointed by the said Court, for the government of the house, and the persons therein confined, be duly observed ; and also to examine the accounts of the keeper with respect to the earnings of the prisoners, and the expense of the institution ; and they shall keep a register of all their proceedings fairly written. They shall have power to make contracts for work to be done in the house, with any person disposed to supply the materials, and to make contracts for letting out any of the persons confined, to employers living, in the estimation of the overseers, conveniently near to the house of correction for the overseers or the master of the house to have the general inspection of the persons so let out, and of the treatment they receive. And the overseers shall receive, out of the wages of the prisoners, such reasonable compensation as the Court of Sessions shall allow.

SEC. 4. *Be it further enacted,* That the said Court of Sessions, shall at any time have authority to remove any of the Overseers, and to replace others for the remainder of the year, and to fill up any vacancies of the overseers made by death, resignation or otherwise. They shall also, at every term, inquire into the state of the house of correction ; and examine the register and accounts of the Overseers and masters ; and make such further regulations and alterations, in the treatment and government of the prisoners, as they shall judge necessary or proper, and not repugnant to the laws of the State.

SEC. 5. *Be it further enacted,* That any Justice of the Peace, as well as the Circuit Court of Common Pleas, may send and commit unto the said house, to be kept and governed, according to the rules and orders thereof, all rogues, vagabonds and idle persons going about in any town or place in the county, begging ; or persons using any subtle

craft, juggling or unlawful games or plays, or feigning themselves to have knowledge in phisiognomy, palmistry, or pretending that they can tell destinies or fortunes, or discover where lost or stolen goods may be found; common pipers, fiddlers, runaways, common drunkards, common night walkers, pilferers, wanton and lascivious persons, in speech, conduct or behaviour; common railers or brawlers, such as neglect their callings or employments, mispend what they earn, and do not provide for themselves for the support of their families; upon conviction of any of the offences or disorders aforesaid, complaint thereof having been made in writing.

SEC. 6. *Be it further enacted,* That when it shall be made to appear to any two Justices, *quorum unus*, that any person being within their county, is lunatic, and so furiously mad, as to render it dangerous to the peace or the safety of the good people, for such lunatic person to go at large; the said Justices shall have full power, by warrant under their hands and seals, to commit such person to the house of correction, there to be detained till he or she be restored to his right mind, or otherwise delivered by due course of law. And every person so committed, shall be kept at his or her own expense, if he or she have estate; otherwise, at the charge of the person or town upon whom his maintenance was regularly to be charged, if he or she had not been committed; and he or she shall, if able, be put to work during his or her confinement.

Two Justices may send lunatics and dangerous persons to house of correction.

SEC. 7. *Be it further enacted,* That any person, standing convicted before the Supreme Judicial Court or Circuit Court of Common Pleas, for any crime punishable in part or in whole by imprisonment, may be sentenced by either of said Courts to suffer his imprisonment, either in the common gaol, or in the house of correction, at their discretion; to be employed and kept to work therein, in the same manner, as persons committed to said house pursuant to the provisions of the fifth section of this Act.

Courts may confine convicted persons in common gaol, or house of correction.

SEC. 8. *Be it further enacted,* That either of said Courts may sentence any person standing convicted before them respectively, of an offence punishable in whole or in part by fine, to pay such fine with the costs of prosecution; and in case he does not pay the same within ten days, that he be immediately thereafter conveyed to the house of correction,

Courts may sentence convicts to house of correction conditionally, viz. on non-payment of fine and costs.

therein to be safely held, employed and kept to work, in the same manner as persons committed to said house pursuant to this Act, for any term of time not exceeding six months. And the expense of keeping, supporting and employing such offender, after deducting the net amount of his earnings, shall be allowed by the Justices of the Court of Sessions, and paid to the keeper out of the county Treasury, in the same manner, and with the same right of reimbursement from the treasury of the State, as the accounts of gaolers for the prison charges of persons confined in gaol, on charge of conviction of crimes and offences committed against the said State.

Expenses how to be paid. **Court of Sessions to provide materials for work, &c.** **and establish rules thereto relating—** **profits of labour, how distributed.** **Mode of management.** **Power of the master of house of correction over**

SEC. 9. *Be it further enacted,* That the Courts of Sessions in their respective counties, shall provide and cause to be kept at the expense of their counties, suitable materials, sufficient at all times to employ and keep at work such as are or may be committed to the house of correction by force of any laws of this State; and shall from time to time make and establish all necessary rules and regulations, touching the employment of persons so committed; the procurement and preservation of said materials, the keeping of accounts of the expense and cost of such materials, and the labour performed by the persons committed to the said house, and the settling of the same. And the persons committed shall be allowed two third parts only of what they earn; and the residue shall be to the use of the master or keeper of the house, unless such persons are masters or heads of families, then the whole profit of their labour, or so much thereof as the Court of Sessions shall order, shall be for the relief and support of such persons and their families. And if any person committed as aforesaid, shall be unable to work, or be weak and sick, or the profits of whose work shall not be sufficient for supporting him or her, then to be comfortably provided for and taken care of by the master of the same house, who shall be reimbursed the same by the parent, master, town or State who are by law obliged to maintain and support such persons, when unable to support themselves, as the case may require.

SEC. 10. *Be it further enacted,* That the master of such house of correction, to be appointed as aforesaid, shall have power and authority and shall set all such convicts, rogues,

vagabonds, beggars and other idle and disorderly persons as aforesaid, that shall be duly sent or committed unto his custody, to work and labour (if they be able) for such time as they shall continue and remain in the said house; and to punish them by putting shackles or fetters upon them; and also from time to time, in case they be stubborn, disorderly, idle or refractory, and do not perform their tasks, and in good condition according as they shall be reasonably stinted, or to abridge them of their food, as the case shall require, until they be reduced to better order.

persons confined.

SEC. 11. *Be it further enacted*, That the master of said house of correction shall, for his care, labour and service in looking after the several persons that shall from time to time, be committed to his care and custody, over and above one third part of their net earnings, have such reasonable allowance made him, as the Court of Sessions shall order and direct, to be paid him by the parent or master of such as are under their immediate care and custody; otherwise by the town to which such persons belong, if within this State, or at the charge of the State, if they belong to no particular town within it. And the master or keeper of every such house shall keep an exact account of all profits and earnings that shall arise from the labour of all such as shall be committed unto his care and custody, as well as the particular time of their commitment and liberation, and present the same account (upon oath if required) unto the Court of Sessions for the same county annually, and also whenever he shall by them be thereunto directed.

Master's compensation.

His account to be allowed by Court of Sessions.

SEC. 12. *Be it further enacted*, That whenever there shall be due to any keeper of such house for the care, trouble and expense of keeping, supporting and employing any person committed as aforesaid, any sum or sums of money, and the same shall have been allowed, and duly certified by said Court, or their committee, he shall have a right to demand and recover the same of such person, his parent, master or kindred, who may be liable by law to maintain him, or of the town wherein he is lawfully settled; and if such person, parent, master, kindred or town shall refuse or neglect to pay such sum, for the space of fourteen days after the same shall have been demanded, in writing, of him or them respectively, or of one of the Selectmen of the town, the

Mode of obtaining such compensation.

said keeper shall have, and be entitled to an action of the case to recover such sum against the person so committed or his parent or master, if any he have, liable by law to maintain him, or against the town in which he is legally settled, in case he has not sufficient estate nor kindred who are able and obliged by law to maintain him, and may declare therein, in a general indebitatus assumpsit, and recover judgment for such sum as shall be found due to him with legal interest from the time the same was demanded and costs. And if the person so committed have kindred who are able and obliged by law to maintain him, the said keeper may have like remedy for recovering such sums of them, as is provided for towns which have been at expense for the relief and support of paupers, by an Act, entitled, "An Act ascertaining what shall constitute the legal settlement, and providing for the relief and support, employment and removal of the poor."

Mode of procuring discharge from house of correction.

SEC. 13. *Be it further enacted*, That whenever any person, committed pursuant to the provisions of the fifth section of this Act, shall apply to the master of the said house for a discharge therefrom, the said master shall signify the same to the overseers of the poor of the town in which such house of correction shall be, or to the overseers of the poor of such town as the person so committed shall belong to, and the major part of either of the Overseers of the poor aforesaid, upon its being made to appear to them that the ends of such commitment have been answered, are hereby empowered to issue their order to the master of such house of correction to discharge the said person from his or her said confinement; the charges arising therefrom being first paid in manner as is herein before provided. And the said master is hereby required to discharge him or her accordingly.

[Approved March 15, 1821.]

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40	L. 12 of the page	for 'preceding'	read 'presiding'		252	L. 3 of p.	for 'where'	read 'wherein'	
54	Sec. 4 L. 14 of Sec.	for 'time'	read 'term'		257	5	after the word 'have'	insert 'in'	
55	7	2	for 'a'	read 'or'	265	Sec. 39 L. 3 of Sec.	for 'when'	read 'whenever'	
55	7	9	before the word 'said'	insert 'the'	271	L. 1 and 3 of p.	for 'affect'	read 'effect'	
56	9	3	for 'the'	read 'her'	271	Sec. 6 L. 2 of Sec.	before the word 'and'	insert 'the'	
57	1	6	for 'to'	read 'in'	278	19	4	for 'on'	read 'in'
58	1	5	for 'and'	after the word 'house'	280	L. 2 of p.	for 'have'	read 'had'	
			read 'or'		281	22	for 'of'	read 'on'	
61	in the title of the act, ch. vi.	insert 'the'	before the word 'crimes'		283	13	for 'lies'	read 'lays'	
62	Sec. 2 L. 9 of S.	before the word 'offender'	insert 'such'		283	last	before the word 'defendant'	insert 'and'	
69	16	8	for 'Treasurer'	read 'Treasury'	284	Sec. 32 L. 2 of Sec.	for 'a'	read 'any'	
73	1	15	after the word 'for'	insert 'the'	288	5	18	for 'whenever'	read 'when'
77	13	6	for 'to'	read 'of'	291	9	4	for 'as'	read 'or'
78	first line of the page,	delete the word 'by'			292	L. 4 of p.	for 'examinations'	read 'examination'	
80	L. 2 of the p.	after the word 'willingly'	insert 'aid or'		293	Sec. 13 L. 5 of Sec.	after the word 'and'	insert 'or articles'	
80	17		for 'counterfeited'	read 'counterfeit'	297	7	5	for 'and'	read 'or'
82	1		after the word 'in'	insert 'all'	301	L. 8 of p.	for 'he'	read 'be'	
82	Sec. 7 L. 4 of Sec.	after the word 'devised'	delete 'or' and insert ' , '		309	24	between the words 'the' and 'by'	and be a '—'	
83	Sec. 7 L. last of S.	for 'aggravations'	read 'aggravation'		310	20	for 'debt'	read 'debtor'	
84	10	6	for 'and'	read 'or'	311	2	for 'with'	read 'and of'	
90	1st L. of p.	for 'Commissioner'	read 'Commissioners'		312	7	for 'summon'	read 'summons'	
90	L. 20		before the word 'Commissioner'	insert 'said'	312	9	between the words 'our' and 'for'	should be a '—'	
97	6		for 'assumpsit'	read 'assumpsit'	318	31	for 'writs'	read 'writ a'	
97	14		for 'cover,	read 'covein'	328	Sec. 8 L. 4 of Sec.	for 'grieved'	read 'grieved'	
98	at the end of the act	for 'January'	read 'February'		353	L. 14 of p.	at the end of the line	insert 'the'	
99	L. 17 of p.	after the word 'year'	delete ' ; ' & insert ' , and '		361	Sec. 1 L. 18 of Sec.	for 'cause'	read 'case'	
100	15		at the end of the line	insert 'the'	370	3	10	for 'to'	read 'of'
105	at the end of the Act	for '1820'	read '1821'		371	2	7	delete 'to'	
108	L. 14 of page,	for 'nuisances'	read 'nuisance'		373	L. 15 of p.	before the word 'require'	insert 'and'	
108	20		after the word 'each'	insert 'one'	376	Sec. 1 L. 10 of Sec.	delete 'the'	before the word 'payment'	
111	25		after the word 'fail'	insert 'of'	378	at the end of the act,	for '17'	read '20'	
113	11		for 'on'	read 'or'	378	in the title,	for 'selection'	read 'selecting'	
144	last		for 'performance'	read 'performing'	379	Sec. 4 L. 5 of Sec.	before the word 'shall'	insert 'shall'	
145	Sec. 2 L. 9 of Sec.	after the word 'of'	insert 'the'		394	1	9	for 'part'	read 'parts'
147	7	6	before the word 'release'	for 'to' read 'a'	395	1	8	for 'acceptances'	read 'acceptances'
150	Sec. 6 L. 2 of Sec.	for 'in'	read 'is'		404	1	34	before the word 'and'	insert 'hereby'
151	in the title,	before the word 'Lands'	insert 'reserved'		407	7	4	delete 'the'	
153	1st line of the p.	for 'whenever'	read 'wherever'		414	last word of the 1st act on the page,	for 'thereon'	read 'thereon'	
155	last		before the word 'Court'	for 'a'	read 'any'	423	Sec. 3 L. 15 of Sec.	after the word 'assignments'	insert 'thereof, and also of the assignments'
156	Sec. 4 L. 26 of Sec.	for 'notification'	read 'notifications'		424	Sec. 6 L. 13 of S.	after the word 'papers'	insert 'and'	
159	9	8	for 'purpose'	read 'purposes'	425	L. 7 of p.	before the word 'action'	insert 'and'	
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202	22	6	after the word 'near,	delete 'to'	432	L. 5 of the p.	delete 'entering'		
202	23	10	for 'be'	read 'he'	432	between the 28th and 29th lines of the p.	insert 'Every blank writ of attachment, with a return thereon, fifteen cents'		
203	24	16	for 'of'	read 'in'	432	L. 37 of p.	for 'judgment'	read 'judgment'	
203	25	16	for 'meeting'	read 'meetings'	435	9	for 'appear'	read 'appears'	
205	L. 18 of p.	before the word 'estate'	insert 'other'		435	10	for 'make'	read 'makes'	
210	2		before the word 'tenement'	insert 'other'	435	18	for 'taking'	read 'taxing'	
215	4		before the word 'guardians'	insert 'guardian or'	444	Sec. 1 L. 6 of Sec.	before the word 'return'	insert 'the'	
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230	7	19	for 'agreeably'	read 'agreeable'	455	11	1	after the word 'of'	insert 'the'
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242	2	5	for 'sentence'	read 'sentences'					
245	7	3	after the word 'herein'	insert 'before'					
247	L. 7 of the act, ch. 56,	after the word 'otherwise'	insert 'interested'						
247	11		for 'statement'	read 'statements'					
247	Sec. 1 L. 2 of Sec.	for 'whenever'	read 'wherever'						
248	3	1	for 'whenever'	read 'wherever'					
248	3	1.1	for 'Justice'	read 'Justices'					

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